

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1239

B  
P/s

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1239

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UNITED STATES OF AMERICA,

Plaintiff- Appellee,

v.

ROBERT WORTHINGTON,

Defendant-Appellant.

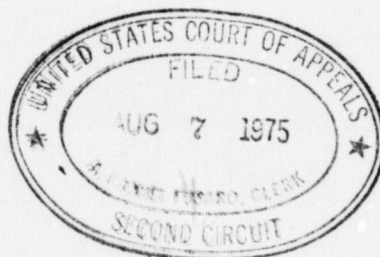
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ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

---

APPELLANT'S APPENDIX

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ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED		
		DATE	NAME	RECEIVED
Fine,				
Clerk,				
Marshal, ✓				
Attorney,				
Commissioner's Court,				
Witnesses,				
18:1014&2 False bank loan applications.				
( Eleven Counts)				

DATE	PROCEEDINGS
11-8-74	Filed indictment. B/W ordered. Cannella, J.
11-11-74	Deft. (atty. present) brought on a B/W. Pleads not guilty. Motions ret. in 10 days. Bail fixed at \$10,000. cash or surety. Deft. remanded in lieu of bail. Case assigned to Judge Ward for all purposes. Cannella, J.
11/12/74	Filed notice of appearance of atty.
11/13/74	Deft. not present (atty. appears) application for a reduction of bail is granted. Bail reduced to \$20,000. P.R.E., co-signed by mother secured by \$5,000. cash-surety. Cannella, J.
11/15/74	Deft. present for arrest & out 11/15/74 deft. produced on writ.



## JUDGE TENNEY

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
11/21/74	Filed notice of appearance of atty. for R. Worthington (see front)		
11-27-74	Application by deft. to re-instate original bail, in \$10,000.00 cash or surety granted. (No opposition by govt. Tyler, J.		
11/27/74	Application by deft. to re-instate original bail, ie. \$10,000. cash or surety - granted. (no opposition by Govt.) Tyler, J.		
12/9/74	Filed affirmation of adjournment of Kenneth W. Salaway for deft. re: pre-trial scheduled for 12/9/74.		
12/5/74	R. Worthington- filed remand dated 11/27/74.		
12/5/74	R. Worthington- filed remand dated 11/14/74.		
12/13/74	R. Worthington- filed papers orig. filed with Magistrate Raby: (1) docket entry sheet (2) appearance bond (surety bond)		
12/26/74	Deft. present (without atty.) Bail presently posted is exonerated. New bail is set in the amount of \$10,000 cash or surety. Deft. remanded in lieu of bail.-Knapp, J.		
12/27/74	Deft. not present ( atty. present) bail set in the amount of \$5,000. cash or surety to cover this indictment & indictment 74-0-1188. Deft. remanded in lieu of bail. Knapp, J.		
1/6/75	Filed Govt.'s notice of readiness for trial.		
1/13/75	R. Worthington- filed remand dated 1/6/75.		
1/16/75	Deft. (atty. present) conference held. Trial date set for 3/31/75 at 10. Knapp, J.		
03-12-75	Filed affdvt. for writ of habeas corpus ad pros. for Robert Worthington ret: 3-13-75.		
03-24-75	Filed affdvt. for writ of habeas corpus ad pros. for R. Worthington. 3-13-75 writ returned unexecuted.		

-cont'd on next page

JUDGE TENNEY

74 Cr. 1056

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date of Judgment
05-05-75	Filed notice of appearance of atty. for deft. Robert Worthington.	
05-08-75	Pre-trial conference held. Trial 5-16-75 at 10:30AM. Tenney, J.	
05-12-75	Case reassigned to Judge Tenney, J. mn	
05-23-75	Filed deft.'s request to charge.	
05-16-75	Jury trial begun before Judge Tenney.	
05-19-75	Trial cont'd.	
-20-75	" "	
05-21-75	" "	
05-22-75	Trial cont'd and concluded. Jury finds the deft. guilty on each of counts 1, 2, 4, 5, 7, 8, 9 <sup>o</sup> and 11. The Court on its own motion dismissed counts 3 & 6. Pre-sentence investigation ordered. Sentence adj. until 6-19-75 at 10AM. deft. cont'd. on his present bail until 5-27-75 in which time the deft. is to surrender to the U.S.S Marshal in room 506 pending sentence. Tenney, J.	
5-23-75	Deft. (atty. present) moves to be continued on his present bail pending sentencing. Motion denied. deft. to surrender 5-27-75 at 10AM. Tenney, J.	
-27-75	Deft. (atty. Davis J. Stolzar) motion by deft. for extension of time to surrender-Granted. Deft. to surrender to custody of to custody of U.S. Marshal 5-28-75 at 10 AM. Bail (\$5,000 cash or surety) cont'd to time of surrender. Gagliardi, J.	
5-29-75	Filed deft. R. Worthington's affdvt. by P. Fauci, Jr. MD... re: surgery.	
-29-75	Deft. (atty. present) remanded in lieu of bail fixed in the sum of \$10,000. P.R.B. to be secured by \$5,000. cash. Bond to be co-signed by the deft.'s mother and father. Tenney, J.	
-29-75	Filed ORDER that the U.S. Marshal S.D.N.Y. shall transport the deft. R. Worthington from F.D.H. to offices of Peter A. Fauci, MD and then return said deft. to F.D.H. Gagliardi, J. mn	
6-02-75	Robert Worthington- filed Personal Recognizance Bond in the sum of \$10,000.	
06-12-75	Filed ORDER TO SHOW CAUSE ret: 6-18-75 re: adjourn sentence date of deft., etc. Tenney, J.	
6-11-75	R. Worthington-filed remand dated 5-29-75.	
6-11-75	Filed copy of order docketed 5-29-75 and marshal's return, order returned unexecuted, 5-29-75.	

G



DATE	PROCEEDINGS	Date of Judgment
6-19-75	Filed JUDGMENT (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of TWO (2) YEARS, on each of counts 1,2,4 & 5 to run concurrently with each other, TWO (2) YEARS, on each of counts 7,8,9,10 & 11 to run concurrently with each other and CONSECUTIVELY with counts 1,2,4 & 5. Execution of sentence on counts 7,8,9,10 & 11 is suspended. Deft placed on probation for a period of THREE (3) YEARS, on each of counts 7,8,9,10 & 11, to commence upon expiration of confinement of counts 1,2,4,& 5 subject to the standing probation order of this Court. Bail pending appeal is continued, on condition that the deft. promptly prosecutes his appeal in accordance with the rules of the Court of appeals for this Circuit. Tenney, J. issued all copies.	
6-20-75	Filed notice of appeal from judgment of 6-19-75. Mailed copies to U.S. Atty. and deft. on 6-24-75.	
07-2-75	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.	

A TRUE COPY  
 RAYMOND F. BURCHARDT, Clerk  
 By [Signature]  
 Deputy Clerk



TBK:lm

7 : 0000. 1056

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

-v- :

INDICT ENT

ROBERT WORTHINGTON, :

74 Cr.

Defendant. :

-----X

COUNTS ONE THROUGH ELEVEN

The Grand Jury charges:

On or about the dates hereinafter set forth,  
in the Southern District of New York, ROBERT WORTHINGTON,  
the defendant, unlawfully, wilfully and knowingly did  
make a false statement and report upon applications for  
loans and credit submitted in the names set forth below,  
for the purpose of influencing the action of the follow-  
ing banks, the deposits of which were then insured by the  
Federal Deposit Insurance Corporation:

MICROFILM

NOV 8 1978

<u>COUNT</u>	<u>NAME IN WHICH THE LOAN APPLICATION WAS SUBMITTED</u>	<u>APPROXIMATE DATE</u>	<u>BANK</u>
1	R. Theodore Worthington	Sept. 1, 1973	Banker's Trust Co.
2	R. Theodore Garris	Oct. 1, 1973	First National City Bank
3	Elliot Samach	Feb. 13, 1974	Banker's Trust Co.
4	Robert Worthington	April 29, 1974	Banker's Trust Co.
5	Elliot Samach	May 17, 1974	Banker's Trust Co.
6	Philip Nolan	May 24, 1974	Banker's Trust Co.
7	Philip W. Friedman	June 20, 1974	Banker's Trust Co.
8	Ahmet Edmans, Sr.	June 25, 1974	Banker's Trust Co.
9	Eliot M. Samach	Sept. 10, 1974	First National City Bank
10	Joseph A. Semper	Sept. 12, 1974	Banker's Trust Co.
11	Phill R. Nolan	Sept. 18, 1974	Banker's Trust Co.

(Title 18, United States Code, Sections 1014 and 2).

*mi. Shew*

FOREMAN

*Paul J. Curran*

PAUL J. CURRAN  
United States Attorney



618'

1 JWjw 1

2 UNITED STATES OF AMERICA

3 vs.

74 Cr. 1056

4 ROBERT WORTHINGTON

5  
6 May 22, 1975  
7 10:10 A.M.

8 Trial Resumed

9 (In open court - jury present)

10  
11 CHARGE OF THE COURT

12 Judge Tenney

13  
14 THE COURT: Members of the jury, we now  
15 come to that part of the case where the evidence is in,  
16 the lawyers have presented their arguments and you are about  
17 to exercise your final role, which is to pass upon and  
18 decide the fact issues in this case.19 First I want to express my thanks to each of  
20 you for the faithful devotion to your duties, your  
21 attention and your promptness.22 As jurors I want to impress upon you -- and  
23 I have had occasion to mention this in the past -- that  
24 you are the sole and exclusive judges of the facts. You  
25 pass upon the weight of the evidence, you resolve such

1       jwjw 2

2       conflicts as there may be in the evidence and you draw  
3       such reasonable inferences as may be warranted by the  
4       testimony and exhibits in the case.

5               My function at this point is to instruct you  
6       as to the law that is applicable to the case and it is your  
7       sworn duty to accept the law as I state it to you in these  
8       instructions and to apply it to the facts as you find the  
9       facts to be.

10              You are to perform this duty without bias  
11       or prejudice to the defendant or to the government. The  
12       law does not permit jurors to be governed by sympathy,  
13       prejudice or bias. Both the parties and the public as  
14       well as the Court expect you to carefully and impartially  
15       consider all the evidence in the case, follow the law as  
16       stated by the Court and reach a just verdict.

17              It is your duty as jurors to consult with  
18       one another and to deliberate with a view toward unanimously  
19       agreeing upon a verdict, if you can do so without violence  
20       to your individual judgment and common sense.

21              Now, with respect to any fact matter it is  
22       your recollection and yours alone that governs. Anything  
23       that counsel either for the government or for the defense  
24       may have said with respect to matters in evidence, whether  
25       during the trial in the form of a question, in argument



1       jwjw 3

2       or in summation is not to be substituted for your own  
3       independent recollection of the evidence.

4               So, too, anything the Court may have said  
5       in the course of the trial or may refer to during the  
6       course of these instructions as to any matter in evidence  
7       is not to be taken in place of your own recollection.

8               As I have instructed you during this trial,  
9       the case must be decided upon the sworn testimony of the  
10       witnesses and such exhibits as have been received in  
11       evidence.

12               Let me point out that the fact that the govern-  
13       ment is a party, that is, that the prosecution is brought  
14       in the name of the United States of America, entitles it  
15       to no greater consideration than that accorded to any  
16       other party to litigation. By the same token, it is entitled  
17       to no less consideration. All parties -- the government  
18       and individuals alike -- stand equal before the bar of  
19       justice.

20               Before we consider the charge itself and  
21       what is required to sustain it, there are certain preliminary  
22       observations that are in order, certain principles of law  
23       that are applicable in every criminal case, to which I  
24       made reference at the time of your selection as jurors.

25               First, the indictment is simply an accusation,

1       jwjw 4

2       a charge. It is no evidence or proof of the guilt of the  
3       defendant. It is merely a means utilized by the govern-  
4       ment to bring a defendant before this Court; nothing more  
5       or less. Accordingly, you will not give any weight what-  
6       ever to the fact that an indictment has been returned  
7       against this defendant.

8               The defendant has pleaded not guilty. There-  
9       fore, the government has the burden of proving by competent  
10      evidence the charges made against him beyond a reasonable  
11      doubt. Whether this burden is sustained does not depend  
12      upon the number of witnesses or the quantity of testimony,  
13      but rather on the nature and quality of the testimony and  
14      other evidence. It is the burden that never shifts and  
15      remains upon the government throughout the entire trial.

16             A defendant does not have to prove his innocence.  
17      On the contrary, he is presumed to be innocent of the  
18      accusations contained in the indictment. The government  
19      must prove his guilt beyond a reasonable doubt.

20             This presumption of innocence is not an idle  
21      phrase to be taken lightly by the jury, but an important  
22      right belonging to every person accused of a crime. As  
23      I told you at the start of this trial, this presumption  
24      of innocence was in the defendant's favor then, it was  
25      present during the entire course of the trial, it is in



1       jwjw 5

2       the defendant's favor even as I instruct you now, and re-  
3       mains in the defendant's favor during the course of your  
4       deliberations in the jury room. It is removed only if and  
5       when you, the members of the jury, are satisfied that  
6       the government has sustained its burden of proving; the  
7       guilt of the defendant beyond a reasonable doubt.

8               The indictment in this case, as you know by  
9       now, contains eleven counts. Each of the counts charges  
10      that on or about a certain date in the Southern District  
11      of New York the defendant, Robert Worthington, unlawfully,  
12      wilfully and knowingly made a false statement and report  
13      upon an application for a loan and credit for the purpose  
14      of influencing the action of a bank, the deposits  
15      of which were then insured by the Federal Deposit Insurance  
16      Corporation.

17             More particularly, Count 1 concerns the sub-  
18      mission of a loan application in the name of R. Theodore  
19      Worthington to Bankers Trust Company on or about September  
20      1, 1973.

21             Count 2 concerns the submission of a loan  
22      application in the name of R. Theodore Garris to First  
23      National City Bank on or about October 1, 1973.

24             Count 3 concerns the submission of a loan  
25      application in the name of Elliot Samach to Bankers Trust

1       jwjw 6

2       Company on or about February 13, 1974.

3               Count 4 concerns the submission of a loan  
4       application in the name of Robert Worthington to Bankers  
5       Trust Company on or about April 29, 1974.

6               Count 5 concerns the submission of a loan  
7       application in the name of Elliot Samach to Bankers Trust  
8       Company on or about May 17, 1974.

9               Count 6 concerns the submission of a loan  
10      application in the name of Philip Nolan to Bankers Trust  
11      on or about May 24, 1974.

12              Count 7 concerns the submission of a loan  
13      application in the name of Philip W. Friedman to Bankers  
14      Trust Company on or about June 20, 1974.

15              Count 8 concerns the submission of a loan  
16      application in the name of Ahmet Edman, Sr., to Bankers  
17      Trust Company on or about June 5, 1974.

18              Count 9 concerns the submission of a loan  
19      application in the name of Elliot M. Samach to First National  
20      City Bank on or about September 10, 1974.

21              Count 10 concerns the submission of a loan  
22      application in the name of Joseph A. Semper to Bankers  
23      Trust Company on or about September 12, 1974.

24              And Count 11 concerns the making of a loan  
25      application in the name of Philip R. Nolan to Bankers Trust



1 jwjw 7

2 Company on or about September 18, 1974.

3 As counsel for the government has noted,  
4 Exhibits 1 through 11 cover the applications and supporting  
5 documents relating to these Counts 1 through 11 so this  
6 should be of assistance to you in considering the evidence  
7 herein. Of course, there are other exhibits which relate  
8 generally or specifically to these counts also.

9 Each of the eleven counts of the indictment  
10 charges a violation of Section 1014 of Title 18 of the United  
11 States Code and that section reads in pertinent part:

12 "Whoever knowingly makes any false statement  
13 or report for the purpose of influencing in any way the  
14 action of any bank the deposits of which are insured by  
15 the Federal Deposit Insurance Corporation upon any applica-  
16 tion or loan shall be guilty of a crime."

17 The gist of this section of the law is the  
18 making of a false statement in an application for a loan  
19 for the purpose of influencing in any way the action of  
20 the bank from which the loan is sought. This section has  
21 nothing whatever to do with defrauding the government or  
22 with whether or not the government is actually defrauded.

23 Thus, the government need not prove that bank  
24 officials relied upon the alleged false statement, or  
25 that they made a loan on the basis of such a statement.

1       jwjw 8

2                   The fact that no pecuniary loss may have been  
3 suffered is not relevant. It is the making of a false  
4 statement on the application for a loan for the purpose  
5 of influencing the action of the bank that is the essence  
6 of the crime.

7                   In other words, whether the false statements  
8 actually accomplished the purpose which is intended is  
9 irrelevant.

10                  Since each of the eleven counts in the  
11 indictment charges a violation of the same statute, the  
12 instructions which I am about to give you relate to all  
13 eleven counts.

14                  Let me emphasize, however, that although the  
15 eleven counts allege violations of the same law, in your  
16 deliberations you are to apply these instructions separately  
17 as to each count in whatever order you may consider them.

18                  Furthermore, let me remind you that you are  
19 to consider separately the guilt or innocence of the defend-  
20 ant with respect to each count.

21                  With those matters in mind, I will now discuss  
22 the elements of the statute which I have just read to you.

23                  In order for you to find a person guilty of  
24 a violation of Section 1014, the section which I have  
25 just read to you, you must find beyond a reasonable doubt



1       jwjw 9

2       each of the five following elements:

3               First, that the defendant himself made, or  
4       that he aided and abetted another to make, or caused to  
5       be made, a false statement or report upon or in an applica-  
6       tion for a loan to a bank.

7               Second, that he did so for the purpose of  
8       influencing in any way a bank's action in approving a  
9       loan.

10              Third, that the statement was false as to a  
11       material fact.

12              Fourth, that the defendant acted knowingly;  
13       and

14              Fifth, that the bank's deposits were then  
15       insured by the Federal Deposit Insurance Corporation.

16              If you find as to any count under consideration  
17       that the government has failed to establish beyond a  
18       reasonable doubt any of the five essential elements I have  
19       just mentioned then you must acquit the defendant on the  
20       count you are considering.

21              If, on the other hand, the government succeeds  
22       in establishing all five elements beyond a reasonable  
23       doubt then it is your duty to convict on the particular  
24       count you are then considering.

25              Let me come back to the first element. The

1       jwjw 10

2       first element which you must consider with respect to  
3       each of the eleven counts in the indictment is whether  
4       the government has established beyond a reasonable doubt  
5       that the defendant either himself made or that he aided  
6       and abetted another to make, or caused another to make,  
7       a false statement or report upon or in an application for  
8       a loan to a bank.

9                You must first consider whether the defendant  
10       himself personally made a false statement in an application  
11       for a loan to a bank, or whether he aided and abetted  
12       another, or caused another to make a false statement in  
13       an application for a loan to a bank.

14               If you find beyond a reasonable doubt that  
15       with respect to the particular count you are considering  
16       the defendant personally made a false statement in an  
17       application for a loan to a bank, the first element has  
18       been established. However, it is not necessary for  
19       the government to prove that the defendant physically  
20       committed the crime of making the false statement in a  
21       loan application.

22               Section 2 of Title 18 of the U.S. Code  
23       provides -- and I quote:

24               "A, whoever commits an offense against the  
25       United States, or aids, abets, counsels, commands, induces,



1       jwjw 11

2       or procures its commission is punishable as a principal.

3               "B, whoever wilfully causes an act to be  
4       done, which if directly performed by him or another would  
5       be an offense against the United States is punishable  
6       as a principal."

7               Thus, a defendant's guilt may be established  
8       without proof that he personally did every act constituting  
9       the offense charged since the above statute specifically  
10      provides that every person who wilfully participates in  
11      the commission of a crime may be found guilty of that  
12      offense.

13              The first part of that statute which I just  
14      read to you makes one who aids and abets another to commit  
15      the crime guilty of the crime. In order to find someone  
16      guilty under this portion you must find two things:

17              First, it is necessary to find beyond a  
18      reasonable doubt that the defendant wilfully associated  
19      himself in some way with the criminal venture, and wilfully  
20      participated in it as he would in something he wished to  
21      bring about, that is to say that he wilfully sought by  
22      some act or omission to make the criminal venture succeed.

23              Second, you may not find the defendant guilty  
24      of aiding and abetting the crime charged unless you are  
25      convinced beyond a reasonable doubt that every element of the

1       jwjw 12

2       offense as I define it to you in these instructions was  
3       committed by some person or persons and that the defendant  
4       participated in its commission.

5               The second part of the statute makes one  
6       who wilfully causes an act which is criminal, guilty  
7       of the crime charged. In order to cause another to  
8       commit a criminal act within the meaning of that  
9       portion of the statute, it is necessary that you find  
10      beyond a reasonable doubt that the accused wilfully did  
11      or failed to do something which in the ordinary course  
12      results in the other persons either doing something the  
13      law forbids or failing to do something the law requires  
14      to be done.

15             In defining the two portions of this statute  
16      I have used the term "wilfully." An act is done wilfully  
17      if done voluntarily and intentionally and with the specific  
18      intent to do something the law forbids or with the specific  
19      intent to do something or to omit doing something the law  
20      requires to be done, that is to say with a bad purpose  
21      either to disobey or disregard the law.

22             I want to emphasize, however, that mere  
23      presence at the scene of a crime and knowledge that a crime  
24      is being committed are not sufficient either to establish  
25      that the defendant aided and abetted or wilfully caused



1 jwjw 13

2 the commission of a crime charged unless you find beyond  
3 a reasonable doubt that the defendant participated in or  
4 actually caused the commission of the offense. Merely  
5 being a knowing spectator is not sufficient.

6 In addition to determining whether the  
7 defendant personally committed the crime of making the  
8 false statement on a loan application to a bank, or  
9 whether he aided and abetted another or caused another  
10 to do so, you must determine whether the government has  
11 established beyond a reasonable doubt that the statement  
12 in the loan application was false.

13 A statement is false if it was untrue when  
14 made and then known to be untrue by the person making it  
15 or causing it to be made.

16 To determine whether the particular statement  
17 was false and whether the person making it or causing it  
18 to be made then knew it to be false you must consider  
19 all of the evidence, testimony and exhibits. Even if you  
20 do not find that the defendant was specifically aware that  
21 the statement or report under consideration was false,  
22 you may nevertheless find that the government has satisfied  
23 its burden of proof if you find beyond a reasonable  
24 doubt that the defendant acted with a conscious or deliberate  
25 effort to avoid learning the truth.

1       jwjw 14

2                   A person may not circumvent criminal  
3 sanctions by deliberately closing his eyes to the obvious  
4 risk that he is engaging in unlawful conduct.

5                   So to summarize the first element of the  
6 crime charged you must find that the government has  
7 established beyond a reasonable doubt that the defendant  
8 either personally made or wilfully aided and abetted or  
9 wilfully caused another to make a false statement or  
10 report upon or in an application for a loan to a bank.

11                   The second element you must consider has to  
12 do with the defendant's specific intent. The government  
13 must establish beyond a reasonable doubt that the defendant  
14 either himself made or that he aided and abetted or caused  
15 the making of a false statement or report upon an applica-  
16 tion of a loan for the purpose of influencing in any way  
17 a bank's action in approving a loan.

18                   To find that a person has the specific  
19 intent of influencing a bank's action he must of course  
20 know that it was a bank which he intended to influence.  
21 Remember, however, that the gist of this statute is the  
22 making of a false loan application for the purpose of  
23 influencing a bank. The fact that the bank may not have  
24 relied upon the statement, that is that the bank may not  
25 have been deceived or may not have suffered any monetary



1       jwjw 15

2       loss, as I already stated to you, is irrelevant.

3               In other words, whether the false statement  
4       actually accomplishes the purpose for which it was  
5       intended is irrelevant.

6               Now we come to the third element. If and  
7       only if you find with respect to the particular count  
8       you are considering that the government has established  
9       beyond a reasonable doubt either of the first two elements  
10      I have mentioned, then consider the third element. Under  
11      the third element the government must establish beyond a  
12      reasonable doubt that the statement was false as to a  
13      material fact. The important word here is "material."

14              By material I mean that the false statement  
15      under consideration has the capacity of influencing the  
16      bank. Once again I want to make clear, however, that the  
17      government need not establish that the bank was actually  
18      influenced by the false statement.

19              We come then to the fourth element. If you  
20      find beyond a reasonable doubt with respect to the count  
21      you are considering that the government has established  
22      each of the three elements of the crime which I have  
23      just discussed with you, you must next consider whether  
24      it has been established beyond a reasonable doubt that the  
25      defendant acted knowingly.

1 jwjw 16

2 An act is done knowingly if it is done voluntarily  
3 and intentionally and not because of mistake, accident or  
4 some other innocent reason.

5 However, in determining whether the defendant  
6 has acted knowingly, it is not necessary for you to find  
7 that the defendant knew that in acting as he did he was  
8 breaking a particular law or a particular regulation.

9 If you find that the government has established  
10 beyond a reasonable doubt each of the four elements I have  
11 summarized for you you must finally consider whether the  
12 government has established beyond a reasonable doubt that  
13 the deposits of the bank to which the loan application  
14 containing the false statement was made was then insured  
15 by the Federal Deposit Insurance Corporation.

16 I told you before that one of the essential  
17 elements of the crime is that you find beyond a reasonable  
18 doubt that the defendant acted with the specific intent  
19 of influencing the action of the bank. Under this fifth  
20 element, which I am now discussing with you, you must only find  
21 beyond a reasonable doubt that the deposits of the particular  
22 bank was then insured by the Federal Deposit Insurance  
23 Corporation. You need not find, however, that the defendant  
24 knew that the bank involved was then insured by the Federal  
25 Deposit Insurance Corporation. I don't believe that there



1 jwjw 17

2 is any dispute the Bankers Trust, the First National City  
3 Bank was so insured, but this is still an element of the  
4 crime which the jury must determine.

5 I want to go back to certain matters which  
6 I discussed generally in covering the elements of the  
7 crime. You recall that in discussing the elements of the  
8 crime I said before you can convict a defendant of a crime  
9 charged you must find beyond a reasonable doubt that the  
10 defendant acted knowingly and also that when you are con-  
11 sidering whether the defendant aided and abetted another  
12 or caused another to act that he acted wilfully.

13 To repeat, to do an act knowingly is to do  
14 it voluntarily and purposely and not because of mistake,  
15 accident, mere negligence or other innocent reason. An  
16 act is wilful, if it is done knowingly and deliberately  
17 and with the specific intent to do something the law  
18 forbids or requires be done.

19 To establish either element it is not necessary  
20 for the government to show the defendant knew that he was  
21 breaking any particular law or any particular rule.

22 Knowledge, wilfulness and intent -- these  
23 are all matters which exist in the mind and cannot be  
24 merely proved by direct evidence. Since you can't look  
25 into a person's mind and see what he knows or what his

1       jwjw 18  
2       intentions are, the only way you have for arriving at a  
3       decision on these questions is for you to take into con-  
4       sideration all the facts and circumstances shown by the  
5       evidence, including the exhibits, to determine whether  
6       the requisite state of mind was present at the time in  
7       question.

8                       In other words, a person's state of mind may  
9       be inferred from all of the surrounding circumstances and  
10      direct proof is unnecessary and very rarely available.

11                     Although the defendant is charged with violating  
12      Section 1014 on eleven separate occasions either directly  
13      or by aiding and abetting others, or by causing others  
14      to act unlawfully, the Court nevertheless permitted  
15      evidence to be introduced of similar transactions occurring  
16      in prior years and not covered by the indictment.

17                     It is very important for you to bear in mind  
18      that such evidence is to be considered by you only insofar  
19      as you might find that it bears upon or relates to the  
20      intent of the defendant.

21                     In other words, such evidence was received  
22      for the purpose of throwing light upon the defendant's  
23      state of mind when the allegedly false statements were  
24      made.

25                     However, it is important for you to keep in



1 jwjw 19

2 mind that evidence that an act was done at one time or on  
3 one occasion is not any evidence or proof whatever that  
4 a similar act was done at another time or on another  
5 occasion.

6 That is to say, evidence that a defendant  
7 may have committed an earlier act of a like nature may  
8 not be considered by the jury in determining whether he  
9 actually committed any act charged in the indictment.  
10 Nor may evidence of an alleged earlier act of a like  
11 nature be considered for any other purpose whatever unless  
12 you first find that the other evidence of the case standing  
13 alone establishes beyond a reasonable doubt that the  
14 defendant did the particular act charged in the particular  
15 count of the indictment then under deliberation.

16 If you should find beyond a reasonable  
17 doubt from other evidence in the case that the accused  
18 did the acts charged in the particular count under deliber-  
19 ation, then you may consider evidence as to an alleged  
20 earlier act of like nature in determining the defendant's  
21 state of mind or the intent with which he did the acts  
22 charged in the particular count.

23 Throughout the instructions I have used the  
24 term "reasonable doubt."

25 What is a reasonable doubt? A reasonable

1     jwvw 20

2     doubt is one which appeals to your reason, your judgment,  
3     your common sense and your experience. It is not impulse,  
4     it is not whim, it is not speculation. It is not an excuse  
5     to avoid the performance of an unpleasant duty, nor  
6     sympathy for a defendant.

7             ✓     On the contrary, it is a doubt which a reason-  
8     able person has after carefully weighing all the evidence.

9             A reasonable doubt may arise not only from  
10    the evidence presented, but also from a lack of evidence.  
11    Since the burden is always upon the prosecution to prove  
12    the accused guilty of every essential element of the  
13    crime charged beyond a reasonable doubt, a defendant has  
14    the right to rely upon the failure of the prosecution  
15    to establish such proof in order to create a reasonable  
16    doubt.

17            If after a fair and impartial consideration  
18    of all the evidence in the case or the lack of it, you  
19    can honestly say that you have such a doubt as would  
20    cause prudent persons to hesitate before acting in matters  
21    of importance to themselves, then you have a reasonable  
22    doubt and in that circumstance it is your duty to acquit.

23            On the other hand, if after a fair and  
24    impartial consideration of all the evidence you can honestly  
25    say that you are satisfied of the guilt of the defendant



1     jwjw 21

2     with such conviction that you would be willing to act upon  
3     it in important and weighty matters in the personal  
4     affairs of your own life, then you have no reasonable  
5     doubt and in that circumstance it is your duty to convict.

6             One final word on this subject.     Beyond a  
7     reasonable doubt does not mean beyond all possible doubt.  
8     If that were the rule few persons however guilty they  
9     might be would be convicted.

10            Consequently, the law in a criminal case is that  
11     it is sufficient that the guilt of a defendant is established  
12     beyond a reasonable doubt.

13            There are two types of evidence which a jury  
14     may properly rely on in deciding the guilt or innocence  
15     of an accused.     One is direct evidence such as testimony  
16     of a witness relating to what he heard or saw, something  
17     he knows of through his own knowledge which bears directly  
18     on a fact issue in the case.

19            For example, testimony by a witness that he  
20     saw the defendant in possession of an object is direct  
21     evidence which if believed by the jury establishes the  
22     fact that the defendant was in possession of the object.

23            The other type of evidence is circumstantial  
24     evidence which is proof of a fact or circumstance from  
25     which one may infer connected facts which reasonably follow

1     jwjw 22

2     in man's common experience.

3             Circumstantial evidence is that evidence  
4     which tends to prove a disputed fact through proof of  
5     other facts. To use a very simple example, if you look  
6     out of the window and see it is raining and your state-  
7     ment that you see the rain coming down is direct evidence  
8     that it is raining.

9             If instead of looking out of the window you  
10    see a succession of people coming inside each with rain-  
11    coats, rubbers and umbrellas and each dripping wet, then  
12    your statement as to that observation is circumstantial  
13    evidence of the fact that it is raining.

14            Circumstantial evidence is of no less value  
15    than direct evidence, for as a general rule the law makes  
16    no distinction between direct and circumstantial evidence,  
17    but simply requires that before convicting a defendant  
18    the jury be satisfied of the defendant's guilt beyond a  
19    reasonable doubt from all the evidence in the case.

20            There are times when different inferences  
21    may be drawn from a certain set of facts. An inference  
22    is a deduction or conclusion which the jury is permitted  
23    to draw from facts which have been established by either  
24    the direct or circumstantial evidence introduced in the  
25    case.



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1     jww 23

2                   An inference is not drawn by speculation or  
3     guesswork, but rather arrived at by the exercise of your  
4     reason and common sense. So while considering the evidence  
5     presented, you are permitted to draw from the facts that  
6     you find to have been proven such reasonable inferences  
7     as seem justified in the light of your experience.

8                   But here again let me remind you that whether  
9     based on direct or circumstantial evidence or the logical  
10    reasonable inferences drawn from such evidence you must  
11    be satisfied of the guilt of the defendant beyond a reason-  
12    able doubt.

13                   I mentioned to you that you are the sole  
14    judges of the credibility and truthfulness of each witness  
15    in this case. In considering the testimony of each  
16    witness you should consider his relation to the government  
17    or the extent of the witness' interest, if any, in the  
18    outcome of the case, his manner of testifying, his appear-  
19    ance and conduct while on the stand, his intelligence,  
20    the strength or weakness of his recollection, and the  
21    extent to which he has been corroborated or contradicted  
22    if at all by the other credible evidence.

23                   The ultimate question for you to decide in  
24    passing on the credibility of a witness is did the witness  
25    tell the truth and to this end you are to use your everyday

1       jwjw 24

2       common sense.

3               If you find that any witness has deliberately  
4 testified falsely to any material fact, you may disregard  
5 all of his testimony or you may accept that part of his  
6 testimony which you believe is truthful or which you find  
7 to be corroborated or supported by other evidence in the  
8 case.

9               You are further instructed that a witness  
10 may be discredited or impeached by contradictory evidence  
11 or by evidence that at some other time the witness has  
12 said or done something or has failed to say or do some-  
13 thing which is inconsistent with that witness' present  
14 testimony.

15              If you believe that any witness has been  
16 impeached and thus discredited it is your exclusive  
17 province to give the testimony of that witness such  
18 credibility, if any, as you think it deserves.

19              Remember, however, that a previous out of  
20 court statement if produced to impeach or discredit a  
21 witness is not in itself to be considered by you in estab-  
22 lishing the true facts.

23              Some of the government's witnesses, in  
24 particular Mr. Samach and Mr. Nolan, were admittedly  
25 participants in the crimes charged in the indictment.



1       jwjw 25

2       The government frequently must use such testimony because  
3       otherwise it would be difficult or impossible to detect  
4       or prosecute wrongdoers. Frequently it happens that  
5       participants have evidence which is relevant to and  
6       important to the case and the government has no choice  
7       but to rely on them.

8               The testimony of an accomplice is not to be  
9       rejected unless the jury thinks it has no weight. Like  
10      any other fact it is to be taken and dealt with by the  
11      jury, by you, who are the triers of the facts. If ..  
12      accomplices could not be used there are many cases where  
13      there is real guilt and where convictions should be had,  
14      where convictions would not be obtained. So their evidence  
15      is properly considered by the jury.

16             However, I want to emphasize that such testimony  
17      must, however, be received with caution and weighed with  
18      great care.

19             It is the universal rule in the federal  
20      court, of course, that a defendant may be convicted on  
21      the uncorroborated testimony of an accomplice.

22             I also wish to remind you that the mere  
23      fact that a witness is employed by the government doesn't  
24      entitle his testimony to more weight or credence than  
25      that of any other witness. It is for you to judge the

1 jwjw 26

2 credibility of all the witnesses and you should consider  
3 their interest if any to determine the weight to be given  
4 their testimony. Remember, it is the quality of the  
5 evidence that counts.

6 The rules of evidence do not permit witnesses  
7 to testify as to opinions or conclusions. An exception  
8 to this rule exists as to those whom we call expert wit-  
9 nesses, witnesses who by education or experience have  
10 become expert in some art, science, or profession or  
11 calling.

12 Such a witness may state an opinion as to  
13 relevant and material matter in which he professes to  
14 be expert and may also state his reasons for the opinion.  
15 It is for you, the jury, to give such expert testimony  
16 such weight as you may think it deserves.

17 In this case the government called a witness  
18 who testified with regard to certain handwriting in dispute,  
19 Mr. Caputo. He claims special qualifications as an expert  
20 in handwriting.

21 Now, a handwriting expert may state his  
22 opinion as to whether documents or signatures in evidence  
23 were written by the same person, or whether they are  
24 genuine, disguised or altered by comparing the handwriting  
25 in dispute with a proven specimen.



1 jwjw 27

2           You may consider the expert's qualifications  
3 and opinion, to weigh his reasons , if any, and give his  
4 testimony such weight as you feel it deserves. As pre-  
5 viously stated, expert opinion is purely advisory and  
6 you may reject it entirely, if in your judgment the  
7 reasons given for it are not convincing or sound.

8           The determination rests with you, not the  
9 experts.

10           In this regard I might note that the hand-  
11 writing expert prepared charts which were introduced into  
12 evidence, but those were received solely to explain how  
13 that witness arrived at his opinion. Those charts are  
14 not in and of themselves evidence or proof of any facts,  
15 although the documents from which the chart was made,  
16 are of course in evidence.

17           If those charts don't correctly reflect  
18 the facts as you find them to be, you can disregard them.  
19 These charts, as I said, are furnished to you as a matter  
20 of convenience only and to the extent that you find they  
21 are not truthful reflections of the evidence in the case  
22 of course you can disregard them.

23           I mentioned earlier about the burden of proof,  
24 the burden of going forward with the case being on the  
25 government; that the defendant does not have to put in a

1       jwjw 28

2       case. The law permits, but does not require a defendant  
3       to take the stand and testify in his own behalf.

4               The defendant has not testified in this case.  
5       Now, this is his absolute right. He is not required to  
6       do so. As I told you, he does not have to prove his  
7       innocence, the burden of proof is always on the government  
8       to establish his guilt beyond a reasonable doubt.

9               So in no respect may such failure to testify  
10       be considered by you as any evidence whatsoever against  
11       him or give rise to any basis or any presumption or  
12       inference that is unfavorable to him.       You should not  
13       permit that fact to weigh in the slightest degree against  
14       him, nor should it enter into your deliberations and  
15       discussions.

16               As I mentioned earlier in my remarks to  
17       you, anything that counsel either for the government or  
18       the defense may have said with respect to matters in  
19       evidence, whether during the trial, in argument or in  
20       summation is not evidence in the case. So, too, as I  
21       said before, anything the Court might have said during  
22       the trial or during the course of these instructions is  
23       not evidence. This case must be decided by you solely  
24       on the basis of the sworn testimony of the witnesses and  
25       such exhibits as were received in evidence.



1 jwjw 29

2           The actions of the Court during the trial  
3 in ruling on motions or objections are not to be taken  
4 by you as any indication of guilt or innocence of the  
5 defendant. These are matters of procedure and law with  
6 which you have no concern.

7           From time to time conferences were had at the  
8 bench out of your hearing which were conducted at the request  
9 of the attorney for the government or the defense, or at  
10 my request. These were conferences solely on questions  
11 of law which it is my duty to decide. You are not to draw  
12 any inferences against either side to this controversy  
13 for requesting such conferences because an attorney  
14 would be remiss in his duty to his client if he did not  
15 protect his interests in a manner provided by law which  
16 it is my function to decide.

17           As I have explained to you, the indictment  
18 against this defendant contains eleven counts. Each count  
19 charges a separate crime and you must render a separate  
20 verdict on each count.

21           In other words, you must render eleven  
22 verdicts.

23           Each count and the evidence pertaining to  
24 it should be considered separately. The fact that you  
25 may find a defendant guilty or not guilty on any one of

1 jwjw 30

2 the counts should not control your verdict as to any other  
3 count.

4 Finally, remember that your verdict must  
5 represent the considered judgment of each juror.

6 In order to return a verdict, it is necessary  
7 that each juror agree on that verdict. In other words,  
8 your verdict must be unanimous as to each of the eleven  
9 counts.

10 Of course, on some counts a verdict of not  
11 guilty or guilty, on other counts of guilty or not guilty --  
12 in other words, I don't want to imply that you must find  
13 the defendant guilty on all counts or not guilty on all  
14 counts. As I tried to point out to you, you should con-  
15 sider each count separately. What I am telling you now  
16 is that in reaching a verdict of guilty or not guilty  
17 as to a particular count you must be unanimous.

18 Let me point out that the duty of imposing  
19 sentence in the event of a guilty verdict rests exclusively  
20 with the Court. The punishment which may be inflicted  
21 upon a defendant must never be considered by you in any  
22 way in arriving at any partial verdict as to the guilt  
23 or innocence of the accused.

24 You are about to commence your deliberations.  
25 I mentioned generally about this before, but the purpose



1 jwjw 31

2 of your deliberations is to exchange views with your  
3 fellow jurors, to discuss and consider the evidence, to  
4 listen to each other's arguments, to present your own  
5 views as you reach a unanimous verdict based solely and  
6 only on the evidence if you can do so without violence  
7 to your own individual judgment.

8 Each of you must decide the case for yourself,  
9 but do so only after an impartial consideration of the  
10 evidence in the case with your fellow jurors.

11 Do not hesitate to re-examine your views and  
12 to change your opinion when after discussion it appears  
13 to be in error. But if after carefully considering all  
14 of the evidence in the case and the arguments of your  
15 fellow jurors you hold a conscientious view which differs  
16 from the others you are not to yield your view simply  
17 because you are outnumbered. Your final vote must  
18 reflect your objective and deeply thought-out determination  
19 of the issues.

20 If in the course of your deliberations you  
21 need to examine any of the exhibits, or desire any of  
22 the testimony to be read, or are not certain as to the  
23 meaning of any part of the Court's instruction, you  
24 may send a note to the Court asking whatever is necessary  
25 to clear up any question you may have.

1     jwjw 32

2                     The case has been a short case. You paid  
3 close attention. I will be glad to answer any questions  
4 or have any testimony read that you find necessary. Of  
5 course, you are at liberty to have all of the exhibits  
6 or such exhibits as you request in the jury room with you.

7                     If you do communicate with the Court, however,--  
8 and you will do so, of course, through your foreman -- you  
9 should not indicate how your vote may then be divided on  
10 any count.

11                    In conclusion, your oath sums up your duty,  
12 that is without fear or favor to anyone you will well and  
13 truly try the issues between this defendant and the govern-  
14 ment of the United States based solely upon the evidence  
15 and the Court's instructions as to the law.

16                    It is important to the government; it is  
17 important to the defendant.

18                    Will counsel please approach the side bar?

19                    (At the side bar)

20                    THE COURT: Any exceptions to the charge?

21                    MR. STOLZAR: No, your Honor.

22                    MR. REILLY: Your Honor, I just have two  
23 small suggestions. One, you might tell the jury they can  
24 call for the indictment as well as the exhibits.

25                    THE COURT: I didn't want to do that until I



1 jwjw 33

2 spoke with you gentlemen. It may be necessary to follow  
3 the counts, although I would cut out the first part and  
4 just give them the bare counts.

5 MR. REILLY: That is agreeable.

6 MR. STOLZAR: All right with me.

7 MR. REILLY: I want to first call the Court's  
8 attention that you mentioned in connection with the similar  
9 acts charged the fact of previous similar acts. Actually  
10 the testimony related to contemporaneous and some cases  
11 subsequent similar acts.

12 THE COURT: Previous to some. I mean,  
13 there weren't any after the period covered by the indict-  
14 ment.

15 MR. REILLY: No.

16 THE COURT: I don't want to confuse them.

17 (In open court)

18 THE COURT: I will give you to take into  
19 the jury room at the suggestion of counsel that part of  
20 the indictment which lists the various counts with the  
21 admonition of course that the indictment is not evidence  
22 in the case. This is merely as convenience to you. I  
23 won't give you the whole indictment, but just the eleven  
24 numbered counts.

25 Mr. Kohl, I want to thank you for your attention,

1 jwjw 34

2 promptness and as you probably know I can't send more than  
3 twelve jurors into the jury room. So you are excused  
4 with the thanks of the Court.

5 (Alternate juror discharged)

6 THE COURT: Swear in the marshals.

7 (Deputy marshals sworn)

8 (Jury left the courtroom at 11:07 a.m.

9 to commence deliberations)

10 (Second page of the indictment sent in to  
11 the jury)

12 (Note received from the jury at 11:15  
13 a.m. Note reads as follows:

14 "Please furnish the jury with all exhibits,  
15 both prosecution and the defense.")

16 (Note marked Court's Exhibit 1)

17 (In open court - jury not present)

18 MR. REILLY: Mr. Stolzar and I have examined  
19 all the government exhibits to be submitted and Defendant's  
20 Exhibit A, which will be submitted, and are in agreement  
21 that these exhibits and these portions of exhibits should  
22 be submitted.

23 We have taken out from Exhibit 6 various  
24 items relating to a civil suit by Bankers Trust Company  
25 against Robert Worthington and that will not be submitted to



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1       jwjw 34a  
2       the jury.

3                   MR. STOLZAR:   Agreed.

4       end  
5       charge

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1 qjw 3

2 A Guilty.

3 THE COURT: I understand as to Counts 1,  
4 2, 4, 5, 7, 8, 9, 10 and 11 you find the defendant guilty  
5 and you are undecided as to Counts 3 and 6; is that  
6 correct?

7 THE FOREMAN: Yes, sir, that is right.

8 THE COURT: Poll the jury.

9 (Jury polled at this point)

10 THE COURT: Very well, the Court will dis-  
11 miss Counts 3 and 6 and I will excuse the jury. You don't  
12 have to come back tomorrow and you are excused from  
13 further jury duty.

14 I want to express my thanks to you. It is  
15 not my province to comment on a verdict one way or the  
16 other but I did want to thank you for your obviously  
17 very careful consideration of the issues here and express  
18 the appreciation of the Court for your attention and con-  
19 sideration of the issues that are involved.

20 Thank you very much.

21 (Jury excused at this point)

22 THE COURT: I could see no reason to bring  
23 them back tomorrow to deliberate on the remaining two  
24 counts. I didn't feel that I should.

25 MR. STOLZAR: If your Honor please, I would



1 jwjw

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2 (In the robing room)

3 THE COURT: How many alternates do we need,  
4 two?

5 MR. REILLY: Two, yes, sir.

6 THE COURT: All right.

7 Now, on this photographic identification, I'm  
8 not going to interrupt the trial as we go along every time  
9 we call a witness and send the jury out. That is just a  
10 waste of jury time.

11 What I propose doing is after we pick the  
12 jury and have opening statements or reserve them until  
13 Monday, you have got your witnesses here and we'll examine  
14 them on this matter of photographic identification and  
15 then dispose of it in advance rather than continue to  
16 send the jury out. It doesn't make sense.

17 MR. STOLZAR: Your Honor, it depends as far  
18 as I am concerned on what the witnesses will testify to  
19 under the circumstances.

20 THE COURT: All right. It will be exactly  
21 what they would testify to during the trial, but instead  
22 of having to send the jury out if we have some of these  
23 witnesses here, at least with respect to the ones we can  
24 do, I am going to adjourn at 4:30, but with respect to  
25 anything that we can accomplish along those lines, we

1 jwjw

3

2 better do it.

3 MR. STOLZAR: If your Honor wants it that  
4 way, that is what we'll do.

5 THE COURT: It is the same thing except it is  
6 just doing it now instead of sending the jury out and you  
7 just get the jury that is sent out and while all this is  
8 going on behind their backs, it doesn't make sense.

9 MR. REILLY: Your Honor, I notified all of  
10 the bank employee witnesses to be here at 2:00 p.m. and  
11 I would prefer to make an opening statement after we  
12 select the jury and get the openings out of the way.

13 THE COURT: How long is the opening statement  
14 going to take?

15 MR. REILLY: Oh, I doubt fifteen minutes.

16 THE COURT: I suppose you will wait --

17 MR. STOLZAR: About three and a half minutes.

18 THE COURT: All right, we can do that, if  
19 you want, and then excuse the jury until Monday morning  
20 and cover as much photographic matter as we can.

21 MR. STOLZAR: Your Honor, before we go into  
22 witnesses on the photographic matter, I do have two general  
23 observations about the photographs which may dispose of  
24 it.

25 The photographs that Mr. Reilly showed me the



1 rgjw

23

2 understand according to the government they identified him  
3 as being black or whatever.

4 MR. REILLY: Your Honor, I was going to call  
5 the investigators first, the people who showed the photo-  
6 graphs.

7 THE COURT: All right.

8 MR. REILLY: James Shand.

9

10 J A M E S A . S H A N D , called  
11 as a witness, being first duly sworn, testified  
12 as follows:

13 DIRECT EXAMINATION

XXX

14 BY MR. REILLY:

15 Q Mr. Shand, where are you employed?

16 A I am an investigator for Bankers Trust Company  
17 in the Security and Protection Division.

18 Q How long have you been there?

19 A It will be five years this coming November,  
20 four and a half years.

21 Q Directing your attention to September 27, 1974 --

22 A Yes, sir.

23 Q Did you have occasion to go to a branch of the  
24 Bankers Trust Company at Madison Avenue and 48th Street?

25 A I did, sir.

rgjw

Shand - direct

27

1  
2 A I told him that I was trying to identify a person  
3 here that was making fraudulent loan applications to Bankers  
4 Trust.

5 Q Did you spread them out in front of her?

6 A I did, sir, and I turned them over -- she  
7 turned them over.

8 Q Which one did she turn over?

9 A She picked out Worthington. She said that's  
10 Worthington.

11 Q Did you show these photographs to an individual  
12 by the name of Ilsa Katz?

13 A I did, sir.

14 Q Is she a bank employee for Bankers Trust  
15 Company?

16 A She is.

17 Q To your knowledge does she work at the Bankers  
18 Trust Company at 48th Street and Madison Avenue?

19 A No. She works at 39th Street and Third Avenue.  
20 She works at a different branch.

21 Q What did you ask Miss Katz?

22 A Practically the same as the other two people,  
23 but her statement was to me that this didn't -- looks like  
24 Worthington, but at that time she was not sure.

25 Q Did she say that she had seen this Worthington



1 rgjw Shand - direct 30

2 A Yes. He was using the name of Nolan.

3 MR. STOLZAR: If your Honor please, I would  
4 move to strike that part of the testimony as being unrelated  
5 to the matter of the photographs.

6 THE COURT: If it's not related -- it's all  
7 right, I will take it.

8 Q Do you recall showing Mr. Angelon any photographs  
9 with respect to the Nolan application at that branch?

10 A Yes, I did show him pictures of Nolan.

11 Q You showed him a picture of Nolan?

12 A Yes.

13 Q Is that one picture or several?

14 A Just the one picture. He is a while male,  
15 yes, sir.

16 Q And what did Mr. Angelon say?

17 A He recognized him.

18 Q Did you show him a picture of Mr. Worthington  
19 in any fashion?

20 A I never showed pictures of Mr. Worthington to  
21 Mr. Angelon, no.

22 Q Do you recall showing that spread of photographs,  
23 Hearing Exhibit 1, to Mr. Angelon at that time?

24 A No, I didn't.

25 MR. REILLY: I have no further questions,

1 rgjw

Shand - cross

44

2 Q If I ask you the same questions about your  
3 showing the photographs to Ilsa Katz, would your answers  
4 be the same?

5 A They would.

6 THE COURT: Would that be with respect to  
7 the full-face and the profile?

8 THE WITNESS: All six, your Honor. In  
9 the same manner this was done.

10 THE COURT: The ones who identified the  
11 photographs, identified the full-face but not the profile,  
12 is that correct?

13 THE WITNESS: That's the only one -- yes,  
14 sir, I would say so because that's the only one I have  
15 marked on the back.

16 Q Five people identified the full-face and  
17 five rejected the profile or Worthington, is that what  
18 you are telling us?

19 A Rejected?

20 Q They didn't identify it as Worthington.

21 A Yes.

22 Q Precisely what did Ilsa Katz say?

23 A She said I believe that's him. I am not  
24 sure.

25 Q You had not shown these photographs to Joseph



1 rgjw

Shand - cross

45

2 Angelon?

3 A No, I had not.

4 Q Is there any reason why you did not show  
5 these to Angelon?

6 A Why I didn't show it to him?

7 Q Yes.

8 A No. I didn't show it to him, no.

9 Q Is there any reason that you didn't show it  
10 to him?

11 A Any reason?

12 Q Yes.

13 MR. REILLY: Objection, your Honor.

14 THE COURT: Yes, he didn't show it to him.

15 Objection sustained.

16 A I just didn't show it to him.

17 Q You showed Joyce Austin a picture of Nolan,  
18 just one photograph of one Caucasian.

19 A That's right.

20 Q In what sequence did you show her the photo-  
21 graph of Nolan and the photographs that are Government's  
22 Exhibit 1?

23 A In the same manner, your Honor, counselor.

24 Q At the same time?

25 A I showed first the picture of Nolan, the

1 rgjw Shand - cross 46

2 white male, and I was trying to tie it in with something  
3 and then I showed him the same procedure with the blacks.

4 Q What did she say when you showed her Nolan's  
5 picture?

6 A She said that's Nolan.

7 Q What did she say when you showed her the  
8 Negroes photographs?

9 A I don't think -- I don't remember -- I don't  
10 think she identified the Negro.

11 MR. STOLZAR: I have no further questions  
12 for Mr. Shand.

13 REDIRECT EXAMINATION

XXXX

14 BY MR. REILLY:

15 Q With respect to the picture of Robert Worthing-  
16 ton, the full-face, you made a recording "ID 9/27/75,"  
17 is that correct?

18 A Yes.

19 Q Did you indicate any particular individual  
20 of who made the identification?

21 A On my notes I have them there on my work sheet --  
22 I call it a work sheet, on the yellow tablet.

23 Q On the photograph you had not done so?

24 A No. I just put this down here and I noted  
25 it on that piece of paper.



1 rgjw Shea - cross/redirect 58

2 A New York City Police, New York City Police,  
3 New York City Police.

4 Q Did you make any attempt to obtain a photo-  
5 graph of Robert Worthington from the New York City Police  
6 Department?

7 A No, I didn't.

8 Q Off the six photographs -- there are six,  
9 aren't there?

10 A Yes.

11 Q Five bear on the face of them New York City  
12 Police Department, Worthington's is clean, no markings?

13 A Yes.

14 MR. STOLZAR: No further questions.

15 REDIRECT EXAMINATION

XXXX

16 BY MR. REILLY:

17 Q Did you obtain those photographs from the  
18 New York City Police Department at sometime prior to  
19 September 1974?

20 A No, I didn't.

21 Q Did Mr. Kelly obtain them prior to September  
22 of '74?

23 A I don't believe he had either.

24 Q Were these photographs already in your  
25 supply of photographs that you had at the FBI?

rgjw

Bursey - direct

65

Mr. Shea had started the investigation. I also had a current investigation going. We decided that I would handle the investigation from there on out and he was relating his information to me. I believe Mr. Shead had a spread and I had my spread. Then we had a couple of employees from the bank come into the conference room and make identifications.

I cannot be sure whether they used Mr. Shea's spread or mine. I know both spreads were on the table. I can't say for sure it was mine or his, but I know the employees examined photographic spreads.

Q Do you recall whether Willie Williams was one of those employees?

A Yes, she was.

Q Do you recall whether she identified from which ever spread it was a photograph?

A Yes.

Q Whose photograph did she pick out?

A Mr. Worthington's photograph.

Q But you don't know whether it was from your spread or Mr. Shea's spread, is that correct?

A I don't recall which one it was.

Q Do you recall going to an office of the Bankers Trust Company on or about April 23rd of this year?



1 rgjw

Burse - direct

66

2 A Yes.

3 Q Did you speak with a person by the name of  
4 Joyce Austin?

5 A Yes, I did.

6 Q Did you have your spread of photographs with  
7 you?

8 A I did, yes.

9 Q That's Exhibit 3?

10 A Yes.

11 Q Did you show her that spread of photographs?

12 A Yes.

13 Q What did you ask her when you showed that  
14 spread of photographs?

15 A I showed her a photocopy of the loan applica-  
16 tion in question and I asked her if she recognized the  
17 loan application. She stated she did and I asked her if  
18 she remembered the individual who submitted the application  
19 and she said she did.

20 Then I asked her to look through some photo-  
21 graphs to see if she can identify any of them and again I  
22 passed the photographs and she thumbed through them.

23 Q Was that a bank application for one Philip  
24 Nolan?

25 A I believe it was.

1 rgjw

Bursey - direct

67

2 Q Did you ask her to look among the picture  
in Hearing Exhibit No. 3 for Philip Nolan?

4 A I don't remember my exact wording. I just  
5 asked her to look through and see if she recognized anyone  
6 and she identified the person who possibly submitted the  
7 application. I don't recall the exact name, but we had  
8 the application in front of us.

9 Q Did you hand her the exhibit or what did you  
10 do? Did you hand her the photographs?

11 A Yes. I usually take them out of the envelope  
12 and pass them to them and let them look through them.

13 Q And she thumbed through it to your recollection?

14 A Yes.

15 Q Did she make an identification?

16 A Yes.

17 Q Who did she identify?

18 A She identified Mr. Worthington.

19 Q As the person who submitted the application?

20 A I believe I said, is this the individual you  
21 know to be Philip Nolan and she said yes.

22 Q Did there come a time when you went to an office  
23 of the First National City Bank on April 26, 1975?

24 A The First National City Bank on April 26th?

25 Q Do you recall --



1 rgjw Bursey - cross 72

2 A They weren't laid out. I passed them to

3 them.

4 Q How many of the photographs that you showed

5 to these people were full face?

6 A I would have to look and see. I think most

7 of them probably were full-face. There may be some side

8 views. Generally I try to use a full-face photograph,

9 if possible.

10 Q You generally try to use a full-face if

11 possible?

12 A It's easier to recognize somebody I think

13 full-face than a side view.

14 Q Did you ever use full-face and profile in

15 the same photo?

16 A Have I?

17 Q Yes.

18 A Generally I do not, but I think I probably

19 have on occasion. It's not always easy to make a spread.

20 We don't have an endless supply of photographs. You just

21 make do with the best you can.

22 Q So that in this instance you would have

23 sought to use full-face only for all your photographs?

24 A Well, if they were available I would try to.

25 A lot of times the full-face ones have side views along

1 rgjw

Burse - cross

73

2 with them.

3 Q Have you ever heard of an instrument, a very  
4 special instrument called a scissors?

5 MR. REILLY: Objection.

6 THE COURT: I don't know what the purpose  
7 of it is, but I will let him answer. We don't have a jury  
8 here.

9 A Yes, sir, I am familiar with a scissors.

10 Q Can the scissors be used to cut the full-face  
11 from a profile if they both appear on the same photograph?

12 A Sure they can, but that would diminish the  
13 size of the photograph. We like to keep them approximately  
14 the same size.

15 Q Did you make a smaller photograph larger?

16 A Yes, they can be blown up.

17 Q Was there any reason why your spread contained  
18 only two photographs with full-face and profile on the  
19 same photo, two out of six?

20 A No particular reason.

21 Q Was there any reason why of the two full-face  
22 and profile one was the defendant?

23 A That's the particular picture we happened to  
24 have of him.

25 Q You made no attempt to remove the profiles on



1 rgjw

Burse - cross

74

2 the two photographs?

3 A No, sir.

4 Q Is there any subject photograph which is  
5 duplicated in your spread and Mr. Shea's spread?

6 A You mean an exact photograph or individual?

7 Q No, an individual.

8 A I believe Mr. Worthington should be in each.

9 Q Mr. Worthington was the only one in each?

10 A I can't swear to that. I haven't examined  
11 Mr. Shea's spread.

12 THE COURT: I would think the exhibits would  
13 speak for themselves to save some time.

14 Q Mr. Shea --

15 MR. REILLY: They were introduced in evidence,  
16 your Honor.

17 MR. STOLZAR: Government's Exhibit 2.

18 Q Would you examine both Mr. Shea's spread and  
19 your spread to see if there is any duplication of individuals?

20 A Mr. Worthington.

21 Q So with both spreads being available at the  
22 Bankers Trust at the time that you and Mr. Shea were  
23 there, it is possible that the persons identifying either  
24 yours or Shea's spreads or both spreads, and the only one --

25 A There wouldn't be both.

1 rgjw Angelon - direct 112  
2 and what is this about. I had received a call from our  
3 loan department that a Mr. Nolan would be coming in ques-  
4 tioning this application. He spoke to me and he said did  
5 I give you an application and I said no, you did not.

6 Q Did there come a time when somebody from the  
7 bank or the FBI showed you photographs and asked you to  
8 pick out the individual who came in with the application  
9 in the first instance?

10 A Yes.

11 Q Who did that?

12 A It was a few days later and it would be one  
13 of our security men, either Jim Shand or Leo DeFillipi,  
14 I think his name is.

15 Q Did he show you one photograph?

16 A No, he had several.

17 Q I am going to ask you, if you can, to just  
18 take a look at this, Exhibit No. 1, and I will ask you  
19 whether that was the grouping of photographs that were  
20 shown to you at that time.

21 A The only one I recall seeing is this one,  
22 I believe. I don't think these others were there. This  
23 is the type pictures that I was shown mostly.

24 MR. REILLY: For the record, the witness  
25 initially pointed out a profile photograph which is



1 rgjw Angelon - direct 113

2 conceded for the record -- I think all parties realize  
3 who this profile photograph is. Do you want to put it  
4 on the record?

5 MR. STOLZAR: No.

6 THE COURT: The profile.

7 MR. REILLY: The profile and he has identified  
8 an individual with a beret in a front view.

9 THE WITNESS: I am saying that this is not  
10 the individual, but this is the style as if taken from  
11 the bank cameras. The majority of the pictures were  
12 like that rather than a mug shot or whatever.

13 Q Do you recall selecting one of the photographs?

14 A Not the first time.

15 Q Did there come a time when the FBI showed  
16 you shome photographs?

17 A No.

18 Q Did anybody show you a series of photographs?

19 A It was again I would say approximately a week  
20 later that our security men picked up the file that I had  
21 on this individual and he had several other pictures at  
22 which time he showed them to me and he handed me the  
23 pile of pictures and I picked out one.

24 Q Hearing Exhibit No. 1, was that the grouping  
25 of photos or was it a different one?

1 rgjw

Angelon - direct

114

2 A I believe it was a different grouping. They  
3 were smaller pictures. They were more like police pictures.

4 Q How were they displayed to you?

5 A He handed me a group, a few pictures. I  
6 guess about five, maybe.

7 Q Do you recall any common characteristics  
8 of the people photographs?

9 A Other than all black and -- I don't know of  
10 anything else, if they were all the same ago.

11 Q Were they male or female?

12 A All male and all black.

13 Q Do you recall who showed you those photographs?

14 A I believe it was our security man Leo and  
15 I believe his last name is DeFillipi. That would be when  
16 he picked up the application from me a week or so later.

17 Q Do you remember the individual who came in  
18 with the application on the first instance?

19 A Yes.

20 Q How long did you speak with him?

21 A I would say a couple of minutes.

22 Q How far away was he from you?

23 A On the other side of my desk. I was standing  
24 at my desk and he was standing on the other side. I asked  
25 him to be seated and he didn't have time.



1 rgjw Austin - direct 120

2 Q You never saw an individual by the name Philip

3 Nolan?

4 A No. I know the name Philip Nolan.

5 Q Did you have occasion to take in an applica-

6 tion for Philip Nolan?

7 A Yes, I did.

8 Q How did you receive that application?

9 A Another gentleman brought it in.

10 Q Who was the gentleman?

11 A His name was -- his last name was Worthington.

12 Q Did you know him as Worthington?

13 A Yes.

14 Q Had you met him before?

15 A Yes, I -- well, not prior to that. Oh, yes,

16 I did. I'm sorry. I am contradicting myself. He had

17 brought in an application prior to the one for Philip

18 Nolan.

19 Q Do you recall that application?

20 A Not now.

21 Q How many times did you ever see this individual,

22 Mr. Worthington?

23 A Twice.

24 Q How long did you spend with him?

25 A About fifteen, twenty minutes.

1 jwbr 1

2 United States of America

3 v.

74 Cr. 1056

4 Robert Worthington

5 New York, New York

6 May 19, 1975

7 10:15 a.m.

8 - - -

9 (Trial resumed.)

10 - - -

11 (In the robing room.)

12 MR. STOLZAR: Before we start, in view of the  
13 fact that we may require some of the witnesses to testify  
14 to the commission of acts which might lead to their own indict-  
15 ment, if they are not represented by counsel, have not been  
16 advised by counsel, I wonder if your Honor would be good  
17 enough to apprise them of their constitutional rights in this  
18 instance before they testify.

19 MR. REILLY: Your Honor, I object to that being  
20 done, certainly in the presence of the jury.

21 THE COURT: I wouldn't do it in the presence of  
22 the jury if that is what you want.

23 MR. STOLZAR: No, not necessarily in the presence  
24 of the jury, but they should know anything they say may be used  
25 against them.



1 jwbr 2

2 I assume, of course, that they are not represented  
3 and have not been advised by counsel to that effect.

4 MR. REILLY: Mr. Elliott Samach has been repre-  
5 sented by counsel. He has come to the United States  
6 office with that counsel. We made certain agreements  
7 with him.

8 The second witness, Mr. Nolan, does not have a  
9 lawyer, but I certainly would have an objection to it being  
10 done in front of the jury.

11 THE COURT: It would happen every time there is  
12 a conference. The government is calling the witnesses.  
13 You can draw your own conclusion.

14 MR. REILLY: Your Honor, I made an application to  
15 allow Steven Bursey, FBI agent, to stay at the counsel  
16 table with me. The testimony will be limited. He will  
17 testify to the arrest, and there is no other witness who  
18 had anything remotely connected with that testimony.

19 THE COURT: All right.

20 The only thing I can do is have you notify me  
21 of those cases where the fellow is apprised of the fact  
22 that he can be prosecuted and his testimony used against  
23 him. If you will notify me before that witness is  
24 called I will excuse the jury.

25 MR. REILLY: I will err on the side of caution

1 jwbr 3

2 and just notify him with respect to any witness whose  
3 application was submitted in conjunction with Mr. Worthington's  
4 activities. Some are innocent as far as the government  
5 knows and some knew exactly what they were doing.

6 But I think it would be advisable to do it in  
7 the case of all.

8 THE COURT: All right. Just let me know.

9 (In open court, jury present.)

10 MR. REILLY: The government calls as its first  
11 witness Mr. Francis Hanlon.

12 F R A N C I S H A N L O N, called as a witness on  
13 behalf of the government, being first duly sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. REILLY:

17 Q Mr. Hanlon, where are you employed?

18 A Bankers Trust Company.

19 Q What is your position with the Bankers Trust  
20 Company?

21 A I am a senior credit administrator.

22 Q How long have you been with the Bankers Trust  
23 Company as a senior credit administrator?

24 A I have been with the bank for five years and  
25 I have been a senior credit administrator for about just



1 jwbr 10 Hanlon-direct

2 THE COURT: Yes.

3 VOIR DIRE EXAMINATION

4 BY MR. STOLZAR:

5 Q Mr. Hanlon, what is your relationship to the  
6 government's evidence which were just offered in evidence?

7 A They are files kept by Bankers Trust Company,  
8 files that we normally review, and the files are stored at  
9 the Installment Loan Division where I work.

10 Q Would you be good enough to tell us what is your  
11 relationship with these files, your personal relationship?

12 A I don't understand.

13 Q Did you prepare these files?

14 A No, the files were prepared in various branches,  
15 some were submitted by the people who applied for the loan.  
16 Once they were assembled they were charged through the  
17 Installment Loan Division and became the property of the  
18 Installment Loan Division.

19 Q What is your relationship to these files?

20 A Once the loan is consummated, paid out, or the  
21 file is finished with at the branch level, it is shipped  
22 to my area and it is kept there. I review it whenever  
23 I can.

24 Q Are you in charge of these particular files?

25 A What are you looking for?

1 jwbr 30

Reilly-direct

2 Q Do you know when it was so insured and what  
3 is its insurance number?

4 A 7213-3, 1969.

5 Q When did it receive its certificate, 1969?

6 A 1969.

7 Q Does it apply to all branches of the First  
8 National City Bank?

9 A Yes, it does.

10 MR. REILLY: No further questions.

11 MR. STOLZAR: No question, your Honor.

12 THE COURT: Excused. Thank you.

13 (Witness excused.)

14 MR. REILLY: The government calls Elliot  
15 Samach, S-a-m-a-c-h.

16 E L L I O T S A M A C H, called as a witness on  
17 behalf of the government, being first duly sworn,  
18 testified as follows:

19 THE COURT: Step up to the side bar, please.

20 (At the side bar.)

21 THE COURT: Has this witness been advised?

22 MR. REILLY: He has been advised that the government  
23 does not intend to prosecute him as long as he told us  
24 everything truthfully and that we expect him to testify  
25 in this case and that if he testifies untruthfully we would



169

1 jwbr 42

Samach-direct

2 A That is when it was granted, correct.

3 Q Had the application been made some time earlier?

4 A Well, the application, I believe, was made late  
5 May.6 Q I show you Government's Exhibit 5-A in evidence  
7 and ask you whether you recognize this exhibit?8 A Well, this particular application -- my handwriting  
9 is nowhere on this application. However the signature  
10 is my signature.11 Q Do you recall the circumstances under which this  
12 loan application was prepared?13 A To my best recollection I signed it -- I signed  
14 this. And it was blank when I signed it. I signed the  
15 application and it was filled in later. That is my best  
16 recollection.

17 Q Do you recall where you got the application?

18 A Yes, it was given to me by Mr. Worthington.

19 Q Did you have a discussion about the application,  
20 about what would be done with it?21 A I was told to sign the application and that it  
22 would be -- it would be submitted, it would be taken --  
23 it would be submitted by Mr. Worthington, I assume.24 Q Now, did you see <sup>him</sup> or anybody else fill out that  
25 application?

1 jwbr 50 Samach-direct 177

2 MR. STOLZAR: Objection, your Honor.

3 THE COURT: I will sustain the objection.

4 Q Did you have a conversation with Mr. Worthington  
5 with respect to whether or not you should go into the Bankers  
6 Trust Company on that day?

7 A Well, Mr. Worthington, yes, had told me that it  
8 would be necessary for him to get the money, in other words  
9 he was Elliot Samach, in other words. So far as the bank  
10 was concerned he was Elliot Samach. So therefore he had  
11 to go to the bank. I couldn't go to the bank.

12 Q I show you Government's Exhibit 9 in evidence  
13 and Government's Exhibit 9-A. Do your signatures appear  
14 on those exhibits?

15 A On Exhibit 9 nothing here is in my writing what-  
16 soever. It is not my signature and there is nothing here  
17 on there that in any way is mine.

18 Q Would you take a look at 9-A in evidence?

19 A This also is not my signature. In fact,  
20 the name is spelled incorrectly.

21 Q How is it spelled incorrectly?

22 A It is spelled E-l-i-o-t and my name is  
23 E-l-l-i-o-t.

24 Q This is an application dated September 1974, look-  
25 ing at 9 in evidence?



1 jwbr 51 Samach-direct

2 A Yes, that is September 9, 1974 and that is the First  
3 National City Bank.

4 Q Did you ever fill out that application?

5 A No.

6 Q Did you ever see Mr. Worthington filling it out in  
7 front of you?

8 A No.

9 Q Were you shown a copy of that application on  
10 September 30, 1974 in your attorney's office?

11 A Yes.

12 Q Was that shown to you by an agent of the Federal  
13 Bureau of Investigation?

14 A Yes.

15 Q And prior to seeing that application or a copy of  
16 that application had you ever seen it before that date?

17 A No.

18 Q Were you ever advised by Robert Worthington whether  
19 he was going to submit that application on your behalf at  
20 the First National City Bank?

21 A No.

22 Q Directing your attention to the entries on  
23 Government's Exhibit 9, the name is spelled with two l's in  
24 Elliott, is that correct?

25 A Yes.

244

1 jwbr 117

Johnson-direct

2 financially and if it was possible to co-sign a note I would  
3 be willing to do that.

4 Q Did you have any discussion with Mr. Worthington  
5 about that?

6 A Yes, I did.

7 Q Did there come a time when Mr. Robert Worthington  
8 approached you about co-signing a note?

9 A Yes.

10 Q Can you tell us when that was about?

11 A That was roughly in September 1974.

12 Q Do you recall where you met Mr. Worthington?

13 A Ruby's Restaurant.

14 Q Where is Ruby's Restaurant? I don't mean the  
15 exact address.

16 A It is on 3rd Avenue, approximately 52nd, 53rd  
17 Street. It is on 52nd or 53rd between 3rd and 2nd Avenue.

18 Q Was Philip Nolan present.

19 A Philip Nolan was present and then left.

20 Q Did you have a conversation with Mr. Worthington  
21 after Philip Nolan left?

22 A Yes.

23 Q What did he say and what did you say?

24 A He asked me to complete the co-signing portion  
25 of a loan which I did.



1 jwbr 119 Johnson-direct 240  
2 concerning whether or not you should advise Mr. Nolan about  
3 your signing this particular form?

4 A No.

5 Q I would like to direct your attention to certain  
6 aspects of this exhibit.

7 THE COURT What is the exhibit number?

8 MR. REILLY: Exhibit 11-B.

9 Q Right under the area under the words "Co-signer,  
10 Philip Nolan" appears the words "For husband." Did you  
11 write that in?

12 A No.

13 Q Did Mr. Worthington write that in in your presence?

14 A No.

15 Q When you gave that to Mr. Worthington did you know --  
16 or when you gave that to Mr. Worthington did those words  
17 appear thereon?

18 A No.

19 Q Did Mr. Worthington tell you whether he or anybody  
20 else would write those words on there?

21 A No.

22 Q Philip Nolan is not your husband, is that cor-  
23 rect?

24 A No, he is not.

25 Q With respect to the entry "Spouse's name," would

247

jwbr 120

Johnson-direct

would you look at that carefully? Do the words "as shown"  
appear there?

A Yes.

Q Is that your handwriting?

A No, it is not.

Q Is there any handwriting underneath the words "as  
shown"?

A I don't follow.

Q Does there appear to be any writing --

A Yes, there is some writing.

Q Can you make that out?

A N/A for not applicable.

Q Did you write that in?

A Yes, I did.

Q Again with respect to Spouse's Income, Item No. 3,  
the words "As shown" appear. Did you write that?

A No, I originally put N/A.

Q With respect to Item 3 and under the item "Spouse's  
Address," there is a word "As shown"?

A Yes.

Q Is there something underneath that?

A E/A.

Q Are the words "As shown" in your writing?

A No.



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1 jwbr 141

Nolan-direct

2 A Yes.

3 Q Had you completed that?

4 A Yes.

5 Q That is your handwriting?

6 A Yes.

7 Q For a building improvement loan, is that cor-  
8 rect?

9 A Yes.

10 Q Did you intend to do any of this construction work  
11 and painting?

12 A No.

13 Q I am going to show you 7-A for identification --  
14 no, 7-A in evidence.

15 Do you recognize 7-A in evidence?

16 A I do.

17 Q What is it?

18 A It is an installment loan application with  
19 Bankers Trust Company.

20 Q Did you fill it out?

21 A Yes, I did.

22 Q Did you sign it?

23 A Yes, I did.

24 Q Where did you sign it and by that I mean can you tell  
25 us when and where that was --

269

1 jwbr 142

Nolan-direct

2 A I believe at the Mary Elizabeth.

3 Q Who was present at that time?

4 A Mr. Worthington.

5 Q Did you have a discussion about filling out this  
6 application?

7 A Yes, I did.

8 Q What did he say and did you say?

9 A You will have to clarify that for me.

10 Q Do you recall what he said and what you said with  
11 respect to filling out this application?12 A I said that the information here was erroneous  
13 as well.

14 Q And what did he say?

15 A He said there is nothing catastrophic about it.  
16 Well, he didn't use the word catastrophic, there is nothing  
17 terrible, this is done every day, as long as you pay the  
18 money back there is no problem, we are not taking the money,  
19 to steal it, you are using a little ruse -- he didn't use  
20 the word ruse, some way to get money, but as long as  
21 you pay it back there will be no problem. It is only  
22 when you don't pay it back you will have a problem.23 Q That was under the name of Philip Friedman, is that  
24 right?

25 A Yes.



270

1 jwbr 143

Nolan-direct

2 Q Are you Philip Friedman?

3 A I was born Philip Friedman.

4 Q Did there come a time when you changed your name?

5 A Yes.

6 Q When was that?

7 A '54, '55.

8 Q You changed it to Philip Nolan?

9 A Right.

10 Q That is the stage name?

11 A I am listed as a/k/a, also known as.

12 Q Prior to filling this loan application out,  
13 have you ever advised Mr. Worthington about the fact that  
14 you have a different stage name than your original name?

15 A Yes.

16 Q When it came time to filling this loan application  
17 what, if anything, did he say about your name Philip  
18 Friedman?

19 A He said that it would be easier to get a loan  
20 under the name of Philip Friedman because you obviously have  
21 no bad credit against that name, which I don't.

22 Q And you had bad credit against the name Philip  
23 Nolan?

24 A Oh, yes.

25 Q Do you know an individual by the name of Holmes?

274

1 jwbr 147 Nolan-direct

2 lieve I gave it back to Mr. Worthington who gave it to me  
3 in an envelope and instructed me to take it over to  
4 Bankers Trust Company on 39th Street and Third Avenue or  
5 40th Street.

6 Q And did you ever learn whether this application  
7 was signed or granted?

8 A Declined.

9 Q When you took it to the bank did you have any  
10 discussions with the tellers there or the loan officers there?

11 A I don't know if I did. I don't think I had so  
12 much discussion except identify myself.

13 Q And were you asked for identification?

14 A Yes.

15 Q What did you do? How did you learn of it, first  
16 of all?

17 A How did I learn about being called back?

18 Q Yes.

19 A I don't remember if they called me or if they --  
20 Mr. Worthington told me to go there. I can't remember  
21 rightly. But I know I was called down there. I don't know  
22 at whose instructions. And I presented an old driver's  
23 license from Miami, Florida as well as an Army discharge  
24 card.

25 Q Did you have any discussions with Mr. Worthington



283

1 jwbr 156 Nolan-direct

2 A I don't believe so.

3 Q Did there come a time when you did have a  
4 discussion concerning a loan application?

5 A I think at one time, yes.

6 Q Let me show you 11-A in evidence. Directing  
7 your attention to the signature line, is that your sig-  
8 nature?

9 A It is.

10 Q Look carefully at the entries on the application.  
11 Are those entries in your writing?

12 A Absolutely not.

13 Q Did you have any discussion with Robert Worthington  
14 concerning your signature appearing on this loan appli-  
15 cation?

16 A Yes.

17 Q Tell us what it was?

18 A Mr. Worthington said we are going to dispense  
19 with submitting the long-form loans, he has a short loan  
20 form, "Sign it, I will take care of the rest and your prob-  
21 lem will be solved.

22 Q What did you do?

23 A I signed it and gave it back to him.

24 Q Was there any conversation with respect to  
25 Miss Shirley Johnson signing a loan application?

1 jwbr 157

Nolan-direct

2 A He said it would be very good if I had a co-maker  
3 that would further fortify the application and he knew that  
4 I was friendly with Miss Johnson, having met her himself  
5 and he said she would be a very good co-signer for this  
6 because she had an immaculate credit record and she has  
7 a very fine position with an organization here in New York.

8 Q Do you know whether Miss Johnson did sign a  
9 statement, a short-loan co-maker's statement?

10 A Subsequently I learned that, yes.

11 Q Did you ever see it?

12 A No.

13 Q Did you have any conversations with Mr. Worthing-  
14 ton about her signing a co-maker's statement for you as her  
15 husband?

16 A Absolutely not.

17 Q You being her husband?

18 A Never.

19 Q Did you ever go down to the Bankers Trust Company  
20 with this loan application?

21 A Absolutely not.

22 Q Did Mr. Worthington ever show it to you at any time  
23 after you signed it?

24 A No.

25 Q Was it in blank when you signed it?



1 jwbr 161 Nolan-direct

2 not going to prosecute me.

3 Q Can you tell me when on Friday that was told you?

4 A About 7:10 p.m.

5 Q Had you made any inquiry prior to that time?

6 A No.

7 Q Had the government advised you concerning any-  
8 thing about the truth or falsity of your testimony today?

9 A Yes, the Federal Bureau of Investigation agent  
10 told me that there could be heinous penalties for perjurious  
11 statements or false statements.

12 Q You spoke to the FBI some time in September 1974,  
13 is that correct?

14 A Yes.

15 Q Where did you first meet him?

16 A I met them first in the offices of Mutual of  
17 New York where I was sharing this little space or rather  
18 I was using this little space and then I met them, I think,  
19 a day or two or three later at their offices on 3rd Avenue  
20 and 65th Street.

21 Q Did there come a time that you met with me in  
22 preparation for your testimony here today?

23 A Yes, that was last Tuesday.

24 Q When you met at the offices of Mutual of New York,  
25 did you tell the FBI everything you knew about this case?

112

1 jwbr 185

Nolan-cross

2 Q Were you born Philip Friedman?

3 A Yes.

4 Q Did you use the name Philip Friedman at any time  
5 during your lifetime?

6 A During my lifetime?

7 Q Yes.

8 A Yes.

9 Q When did you change your name to Philip Nolan?

10 A Either 1955 or '4 or '6.

11 Q How was that done?

12 A As the result of a casual enterprise. I was  
13 working at a show, I was obliged to tour with the show and  
14 it was suggested to me by my agent that I use that name  
15 because I had used the stage name of Nolan as a character  
16 in some of the plays in which I appeared and since I was  
17 involved in historical exhibits at that time dealing with  
18 American history it was felt by the agency or the agent that  
19 the name Philip Nolan would be a conversation piece. I was  
20 obliged to use it and I used it. I complied with the  
21 Social Security and got another Social Security card with  
22 an a/k/a designation and have used it since and am known  
23 professionally by that name.

24 Q But you never filed with the Supreme Court of the  
25 State of New York or the then City Court of the City of



1 jwbr 186

Nolan-cross

2 New York for a legal change of name to Philip Nolan, did you?

3 A No.

4 Q So that in fact your name is Philip Friedman,  
5 although you use the alias of Philip Nolan or a stage name  
6 or whatever?

7 A I don't know what you mean by "in fact."

8 Q In fact it is true.

9 A What your construction is, sir, is entirely up to  
10 you. I have told you the way I acquired the name, how  
11 I have used it, and that is all I have to say on that.  
12 There is no subterfuge intended, it is a professional name.  
13 Many professional actors and directors use professional names  
14 and are known by that name, notwithstanding the fact I never  
15 had it changed legally.

16 Q It is your understanding that many people use an  
17 alternate name even though they do not have their name  
18 changed legally?

19 A Precisely.

20 Q When I say to you, Mr. Friedman, I am speaking of  
21 your true legally unchanged name, is that correct?

22 A I don't know what relevance it has, what you call  
23 me. I am here to testify and answer your questions.

24 MR. REILLY: If Mr. Stolzar wants to call the  
25 witness Mr. Friedman he may go right ahead.

1 jwbr 195

Nolan-redirect

2 did you ever file false loan applications with any banks?

3 A No.

4 MR. REILLY: No further questions.

5 THE COURT: You are excused.

6 (Witness excused.)

7 THE COURT: We will take a short recess.

8 (Recess.

9 (Jury present.)

2 10 MR. REILLY: The government calls Mr. Bernard  
11 Batchellor.

12 B E R N A R D B A T C H E L L O R, called as a witness  
13 by the government, being first duly sworn, testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. REILLY:

17 Q Mr. Batchellor, where are you employed?

18 A First National City Bank, 3rd Avenue and 45th  
19 Street.

20 Q How long have you been at that branch?

21 A About two months

22 Q Prior to that time where were you employed?

23 A 5th Avenue and 37th Street.

24 Q Again with the First National City Bank?

25 A Yes.



1 jwbr 196 Batchellor-direct

2 Q For what period of time?

3 A Six years.

4 Q What was your position at the 37th Street  
5 5th Avenue branch?

6 A I was a platform assistant, official assistant.

7 Q What does a platform or official assistant do?

8 A Takes care of checking accounts, opens new accounts,  
9 sometimes take care of loans.

10 Q When you were at the First National City Bank,  
11 37th Street and 5th Avenue branch, did you ever see an  
12 individual known to you by the name of R. Theodore Garris?

13 A Yes.

14 Q And how often did you see Mr. Garris?

15 A Well, all I could say, many times.

16 Q Did you see him at the bank?

17 A Yes.

18 Q Did you see him outside the bank?

19 A A couple of times, yes.

20 Q Where did you see him outside the bank?

21 A At a restaurant called Mary Elizabeth.

22 Q When you saw him at the bank did you ever have  
23 occasion to talk with him about loan applications or checking  
24 accounts?

25 A Yes.

1 jwbr 197

Batchellor-direct

2 Q To your knowledge, did he have a loan application  
3 pending with the First National City Bank?

4 A Yes.

5 Q Under the name of R. Theodore Garris?

6 A Yes.

7 Q Let me show you Exhibit 2 which is in evidence.

8 A Yes.

9 Q That is a loan application placed with the  
10 First National City Bank on October 1, 1973, is that cor-  
11 rect?

12 A Yes.

13 Q And it is for the purchase of an automobile?

14 A Yes.

15 Q What is the automobile?

16 A I understood it was a Lincoln Continental.

17 Q Do you see Mr. R. Theodore Garris in court today?

18 A Yes.

19 Q Would you please point out Mr. Garris? Would you  
20 please state for the record where you are pointing?

21 A To the left of this gentleman here, in the blue  
22 tie and gray suit.

23 MR. REILLY: Let the record indicate the witness  
24 has identified the defendant Robert Worthington.

25 Q Did you have any discussions with Mr. Garris, as



326

1 jwbr 199

Paynes-direct

2 A Official assistant.

3 Q In your capacity as official assistant, do you  
4 receive loan applications from customers?

5 A I do.

6 Q I am going to direct your attention to the exhibit  
7 before you, Exhibit 9. It is a loan application submitted  
8 by one Elliot M. Samach and it was submitted on September 9,  
9 1974. Did you receive that application?

10 A Yes, I did.

11 Q Did an individual hand that application to you?

12 A Yes.

13 Q Did you have a discussion with that individual when  
14 you received the application?15 A Partially, yes. I mean he completed the application  
16 and brought it back to me and I asked him for the identifi-  
17 cation that is necessary, that we generally ask for.

18 Q What did he say to you?

19 A He didn't have it with him at the moment.

20 Q Tell me this: Do you recall the individual who  
21 presented that application to you?

22 A Not too clearly.

23 Q What do you recall about the individual who pre-  
24 sented the application?

25 A Heavy set man and he was black. That is all

1 jwbr 200

Paynes-direct

2 I recall.

3 Q Male?

4 A Male. I said man.

5 Q And black, heavy set. Do you recall his height  
6 in any way?

7 A Well, it does go back to September, but as far as  
8 I can possibly recall I figured him to be about five-ten.

9 Q Tell me this: Was he wearing anything that caught  
10 your attention?

11 A A hat.

12 Q What kind of a hat?

13 A Well, now, whether or not he was wearing it the  
14 first time he came to me or not, he did come back with  
15 identification one day and he had a helmet on. I don't  
16 know if that, you know -- sort of a safari hat.

17 Q You say he came back a second time?

18 A Right.

19 Q When was that?

20 A To bring the identification maybe a week or so later,  
21 it depends, two or three days later. Generally I tell them  
22 to come back two or three days later.

23 Q Did he submit any identification that you re-  
24 call?

25 A Yes, he did. But I didn't have the application at



1 jwbr 204

Katz-direct

2 Mrs. Katz, that is a loan application folder from  
3 the Bankers Trust Company for a loan taken out by Robert  
4 Worthington?

5 A Right.

6 Q Did you supervise the process involved in this loan?

7 A Yes, I did.

8 Q Were you the loan officer who actually put in the loan  
9 application?

10 A No, a different gentleman took in the loan  
11 application.

12 Q Excuse me. What was his name?

13 A Kirby Holmes.

14 Q Did there come a time when you spoke to the  
15 applicant yourself as the supervisor?

16 A Yes, I did.

17 Q Can you tell us how soon after the application  
18 was filed did that happen?

19 A I would imagine it was the beginning of May.  
20 The application was taken in the end of April.

21 Q The beginning of May 1942?

22 A That is correct.

23 Q Did you speak with the applicant?

24 A Yes, I did.

25 Q For how long a period of time did you speak

1 jwbr 205 Katz-direct

2 with him?

3 A Oh, five, ten, twenty minutes at one time, a  
4 shorter period some time later.

5 Q Was that the same day or a different day?

6 A No, that was a different date.

7 Q How soon after his first appearance did the loan  
8 applicant come in for the second appearance?

9 A Well, usually, I can't recall exactly, maybe two  
10 or three days later, in the time that the application is  
11 taken which is a period of about a week or so.

12 Q And did the applicant identify himself as Robert  
13 Worthington?

14 A Yes.

15 Q Do you see Robert Worthington in court today?

16 A Yes.

17 Q Would you indicate?

18 A The gentleman at the desk with the other gentleman.

19 Q Is he on the left of you or the right of you?

20 A The left from my place.

21 MR. REILLY: Let the record indicate the witness  
22 has identified Robert Worthington.

23 Q What discussion, if any, did you have with  
24 Mr. Worthington on the first meeting?

25 A Well, we probably went over the loan application and



758

1 jwbr 231

Austin-direct

2 Q Do you know whether that loan was approved or  
3 declined?

4 A Well, this one was declined.

5 Q Do you see Mr. Robert Worthington in the courtroom  
6 today?

7 A Yes, I do.

8 Q Would you please point him out?

9 A The gentleman sitting there.

10 Q For the record describe where he is sitting.

11 A Straight ahead.

12 Q Is he to the left of you?

13 A To the left.

14 Q To the left of you?

15 A Yes.

16 Q All right.

17 MR. REILLY: Let the record indicate the  
18 witness is pointing to Robert Worthington.

19 No further questions.

20 Sorry, the defense counsel may have a few questions.

21 CROSS EXAMINATION

22 BY MR. STOLZAR:

23 Q Miss Austin, unfortunately your voice didn't carry  
24 so I could hear you. Did you say when the Philip Nolan  
25 application was brought in the person who brought it in stated

761

1 jwbr 237 Angelon-direct

2 Q How long have you been at your present branch?

3 A Since November '74.

4 Q Prior to November '74 were you at a different  
5 branch?

6 A Yes.

7 Q Where was that?

8 A At John and Gold Street, Manhattan.

9 Q For what period of time were you at John and  
10 Gold Street?

11 A For about three years prior to November '74.

12 Q Is that in downtown Manhattan?

13 A Yes.

14 Q What position did you hold at John and Gold Street?

15 A Assistant manager.

16 Q In your capacity as assistant manager, do you  
17 receive applications for loans at the bank?

18 A Yes.

19 Q Did you receive a loan application for a person  
20 by the name of Phill R. Nolan?

21 A Yes, I did.

22 Q I am going to show you Exhibit 11, 11-A and the  
23 contents of a Bankers' Trust Company loan application folder  
24 for Phill R. Nolan.

25 Now, in addition to that, was there also a short form



1 jwbr 239

Angelon-direct

368

2 Q He didn't have any identification with him at that  
3 time?

4 A None that I was shown. He was in a hurry.

5 Q Did he indicate to you that he was Phill R. Nolan?

6 A He didn't indicate either way. I said "I will  
7 call you, Mr. Nolan."

8 He said, "No, I am out on the road, out of the  
9 office and I will give you my card."

10 Q Did he say Shirley Johnson was related to him?

11 A He said this is my wife and she has established  
12 credit with Bankers Trust Comapny and lives under her  
13 maiden name.

14 Q How long was it you spoke to this individual when  
15 he brought in the loan application?

16 A It would be about five minutes.

17 Q Do you recognize the individual in the courtroom  
18 today?

19 A Right there.

20 Q Point him out for the record with your pointing  
21 to.

22 A To the left on the second table.

23 Q Is he to your left or right?

24 A To my left.

25 MR. REILLY: Let the record indicate that the

1 jwbr 240. Angelon-direct-cross  
2 witness has pointed out Robert Worthington.

3 Q Did he ever return again?

4 A No, he didn't.

5 Q Did you ever see him again?

6 A No, I didn't.

7 MR. REILLY: No further questions.

8 CROSS EXAMINATION

9 BY MR. STOLZAR:

10 Q Mr. Angelon, was Government's Exhibit 11 prepared  
11 in your presence?

12 A No, it was not.

13 Q You do not know who prepared it?

14 A No, I do not.

15 Q Did you state that the gentleman you pointed to  
16 in the courtroom never identified himself to you as Phill  
17 R. Nolan?

18 A That is correct.

19 MR. STOLZAR: No further questions.

20 MR. REILLY: One additional question.

21 REDIRECT EXAMINATION

22 BY MR. REILLY:

23 Q I am going to show you Government's Exhibit 11-B  
24 in evidence. Is that the other short loan form in the  
25 name of Shirley Johnson that was presented to you?



779

1 jwbr 243

Millares-direct

2 Q Will you describe what he was wearing, to the best  
3 of your recollection?

4 A To the best of my recollection he was sharply  
5 dressed. He was wearing a kind of jacket that is a  
6 little shiny jacket, looked like leather, but I don't know  
7 if it was leather or not, but it looked like it was  
8 leather and he was wearing a hat.

9 Q Did you ever see him again?

10 A I saw him again one week after, approximately one  
11 week after.

12 Q And did you have a conversation with him at that  
13 time?

14 A Just for a very short time.

15 Q How long?

16 A I would say maybe around 45 seconds to one minute.

17 Q And how far away was he from you at that time?

18 A He was in front of my desk.

19 Q Do you recognize him as the individual who had  
20 been in the week before?

21 A Right.

22 Q After that second meeting, did you have occasion to  
23 be shown some photograph?

24 A I had occasion to be shown some photographs.

25 Q How many times were you shown photographs.

371

1 jwbr 244

Millares-direct

2 A I was shown-- on one occasion I was shown photographs  
3 at our security and protection division by Mr. De Filippi.

4 Q Can you tell us what he showed you?

5 A He showed me first a series of photographs and  
6 he told me "Pick out the person in this series of pictures  
7 that went and applied for a loan with you." And I pointed  
8 out the person. And afterwards he showed me one photo,  
9 just one photo with one person in it and he asked me if this  
10 photo is the same as the person or the photo that I identified  
11 in a series of pictures. I said yes.

12 Q Subsequent to that, did anybody from the FBI show  
13 you any photographs?

14 A Yes.

15 Q Do you recall who that was?

16 A Yes, Mike Shea.

17 Q And how many pictures did he show you or what  
18 did he do?

19 A To the best of my recollection he showed me one  
20 picture.

21 Q On that first spread of photographs do you recall what  
22 kind of pictures were there of the individuals?

23 MR. REILLY: I will withdraw the question.

24 Q With respect to the spread of photographs shown  
25 you initially at the bank, can you recall about how many



370

1 jwbr 248

Mi es-cross

2 it is a mixture.

3 Q You would be inclined to say?

4 A Right.

5 Q Who gave you that information?

6 A Well, I have some background -- some kind of  
7 imaginations now, I thought I saw some whites in that picture.  
8 I am not too sure of that.

9 Q You are using your imagination now?

10 A Right.

11 Q After you picked out the photograph from the group  
12 of photographs, Mr. De Fillipi showed you a single photograph?

13 A Right.

14 Q And he asked you to identify that single photograph?

15 A Right.

16 Q And you say that was about the latter part of  
17 September '74?

18 A Well, I would say about two weeks after I received  
19 the application.

20 Q How soon thereafter did Mr. Shea see you?

21 A I would say a week after. Around that time.

22 Q And your best recollection today is that Mr. Shea  
23 showed you one photograph?

24 A One photograph.

25 Q And that was a photograph of the same person who

1 jwbr 249 Millares-cross-redirect

2 Mr. De Fillipi showed you when he showed you the single photo-  
3 graph?

4 A It was the same person that I saw in the spread --  
5 both in the spread with Mr. De Filippi and also in the  
6 one picture Mr. De Fillipi showed me.

7 Q Mr. Shea didn't show you the spread, did he, just  
8 the one photograph?

9 A As far as I recall, he didn't.

10 REDIRECT EXAMINATION

11 BY MR. REILLY:

12 Q Has any spread of photographs been shown to you  
13 in this loan application since you were shown the photograph  
14 by Mr. Shea of the FBI?

15 A No other photograph was shwon to me.

16 Q And prior to this trial, since September '74,  
17 you have never been shown a photograph of the defendant or  
18 anybody else connected with that loan application?

19 A No, I have not been shown any photograph.

20 Q All right. Do you have an independent recol-  
21 lection of what the individual who presented the Joseph  
22 Semper application looked like?

23 A Oh, yes, yes.

24 Q Now, do you need the photograph to help you identify  
25 that witness, that individual if you saw him?



1 jwbr 250

Millares-redirect-recross

2 A No, no.

3 Q Can you identify him in the courtroom today?

4 A Yes, Mr. Semper.

5 Q Mr. Semper is sitting next to the attorney who just  
6 questioned you?

7 A Yes.

8 MR. REILLY: Thank you. No further questions,  
9 your Honor.

10 MR. STOLZAR: If your Honor please, I have one or  
11 two more questions.

12 RECROSS EXAMINATION

13 BY MR. STOLZAR:

14 Q Was the application brought in to you, did the  
15 person who brought it to you identify himself as Joseph Semper?

16 A He didn't say specifically that "I am Joseph  
17 Semper" but when I was examining the application I asked for  
18 identification in order to identify that the applicant is  
19 Joseph Semper.

20 Q And did you --

21 THE COURT: This has nothing to do with voir  
22 dire.

23 MR. REILLY: That is correct, your Honor, I object.

24 THE COURT: This has nothing to do with voir  
25 dire.

1 jwbr 252

379

2

AFTERNOON SESSION

3

2:10 p.m.

4

5

(In open court; jury present.)

6

MR. REILLY: Your Honor, the government calls

7

Antonio Millares.

8

A N T O N I O M I L L A R E S, called as a witness

9

by the government, having been first duly sworn,

10

testified as follows:

11

DIRECT EXAMINATION

12

BY MR. REILLY:

13

Q Mr. Millares, where are you employed?

14

A I am employed with Bankers Trust Company.

15

Q And where are you presently located?

16

A I am presently located at Branch 29, Mott Haven

17

office, at 256 Willis Avenue, in the Bronx.

18

Q What is your position there?

19

A I am the head of office there.

20

Q Prior to joining the Mott Haven Branch, where

21

were you located before that?

22

A I was located at our office in One Whitehall

23

Street in Manhattan.

24

Q Is that downtown Manhattan?

25

A Downtown Manhattan, the lower tip of Manhattan.



380

1 jwbr 253

. Millares-direct

2 Q How long were you located there?

3 A I was there two years, two months.

4 Q You were there during September and October of 1974?

5 A I was there in that office.

6 Q Did you handle a loan application for an individual  
7 by the name of Joseph A. Semper?

8 A I did handle an application.

9 Q Was that application received by you on or about  
10 September 12, 1974?

11 A I did receive that application.

12 Q And I would like you to look, if you can, at the  
13 contents of Exhibit 10 in evidence which is the Bankers  
14 Trust Company loan application folder for Joseph A. Semper.  
15 Would you just take a look at that.

16 Is that the application that you received?

17 A This is the application that I received.

18 Q Do you recall the circumstances surrounding your  
19 receipt of that loan application?20 A When I received the application, I interviewed the  
21 applicant and he has to go through the details of the  
22 application, and one of the things I asked from him is, of  
23 course, an identification and when I asked him if he has  
24 any kind of identification, one of the things I asked is if  
25 he has a driver's license with him to identify himself.

1           jwbr 254                               Millares-direct

2                       The applicant said that he had a driver's license  
3 but it was outside.

4           Q       Did he leave the bank?

5           A       He left the bank.

6           Q       Did he return?

7           A       He returned shortly afterwards, around four or  
8 five minutes afterwards with the driver's license.

9           Q       Did he show you the driver's license?

10          A       He showed me the driver's license.

11          Q       Was it the driver's license of Joseph A. Semper?

12          A       Joseph A. Semper.

13          Q       How long a time did you speak with this individual  
14 at that time?

15          A       At that time the first time that he came with the  
16 application I spoke to him for around four or five minutes.

17          Q       And how far away from you was he?

18          A       He was very close to me. This is my desk, he was  
19 sitting here at the chair.

20          Q       Do you recall how he was dressed?

21          A       He was dressed in a very sharp manner. He was  
22 wearing a kind of jacket that looks shiny. I don't know  
23 if it was made of leather, but it looked like leather to  
24 me and he was wearing a hat.

25          Q       Now, did you ever see him again after that?



288

1 jwbr 261

Millares-cross

2 license as identification"and he said "I don't have my driver's  
3 license here now with me, but I left it outside. I will  
4 have to go and get it."

5 Q When he gave it to you did he say "This is my  
6 driver's license" or did he say "This is Joseph Semper's  
7 driver's license"?

8 A He said "Here is the driver's license."

9 Q Oh, "Here is the driver's license." he didn't  
10 specify whose driver's license?

11 A As far as I recall he didn't say Joseph Semper's  
12 driver's license.

13 Q At what point in time was the note signed?

14 A The note was signed right there after I went  
15 through the application.

16 Q All in this four or five minutes?

17 A Right.

18 Q Did you see the person fill out the application  
19 form?

20 A I didn't see him fill it out actually, but I saw  
21 him --

22 Q Please, just answer the question.

23 A No, I didn't see him.

24 Q Did you see anybody sign the application form?

25 A No, I didn't.

1 jwbr 295 Semper-direct

2 The thing was the information which he was putting on the  
3 yellow pad he had, it was a blank form I signed, were things  
4 transferred to the other application forms and taken to differ-  
5 ent branches.

6 Q Did he ask you what your income was when he was  
7 filling out the yellow pad form?

8 A Yes, I fill out the one --

9 Q What did you tell him your income was for that  
10 year?

11 A For the year?

12 Q Yes.

13 A 18, eighteen-five.

14 Q Directing your attention to a statement of debts.  
15 Did you have a mortgage with the Richmond Hill Savings  
16 Bank?

17 A Yes, and this is information which I filled out  
18 on the yellow pad. He wanted to know if I had property.

19 Q What is the amount of the mortgage you had at that  
20 time?

21 A 30,000.

22 Q It was not 35,000 as stated on that form?

23 A No.

24 Q Directing your attention to the Chemical Bank  
25 debt of \$5,000 with a present balance of \$1,000.



1 jwbr 301 Semper-direct

2 Q Finally, 10-E, have you ever seen 10-E before, a  
3 copy of the telephone bill?

4 A I think I saw this at the FBI office.

5 Q Did you provide that to Mr. Worthington in  
6 connection with the Bankers Trust loan application?

7 A No, Mr. Worthington the very first day he wanted  
8 certain information in the preparation of this form. I was  
9 pretty occupied myself. I was trying to get back to the  
10 office, concerned about the same problems with City Hall.  
11 And he was quite nice. Mr. Worthington gave me the impression  
12 that he was in a position to assist us. I wasn't prepared to  
13 tell him don't look at this, don't touch that. If you are  
14 in need of help and someone is willing to help you, you  
15 don't do things or say things to upset him. The city  
16 was --

17 Q Did he collect this information from your of-  
18 fice?

19 A From the office, yes.

20 Q Look at 10-B in evidence which is a long piece  
21 of paper. Yes, that is it. Turning to 10-B, I would like  
22 you to look at the signature. It says Joseph A. Semper.  
23 Is that your signature?

24 A That isn't remotely like my handwriting.

25 Q What is the answer?

1 jwbr 304 Semper-cross

2 CROSS EXAMINATION

3 BY MR. STOLZAR:

4 Q Mr. Semper, was Mr. Worthington to work with you  
5 to help you obtain a loan for yourself or your business or  
6 both?

7 A Not for myself. The loan was for the business.

8 Q The business of Seepaul Electric?

9 A Yes.

10 Q Did Seepaul Electric and you have secretaries  
11 or other help in the office?

12 A Yes, we have a secretary in the office.

13 Q Would you tell your secretary to assist Mr.  
14 Worthington in any way to help you?

15 A I told him anything he wanted.

16 Q Would you speak up?

17 A I told him if there was any information he wanted,  
18 you know, let him have access to it. It is the same sort  
19 of courtesy I extend to other people who are trying to help.

20 Q Did you see who filled out the loan application after  
21 you signed it?

22 A After I signed it?

23 Q Yes.

24 A I never saw the application after, you know,  
25 after that day until the day I went to the FBI.



432

1 jwbr 305

Semper-cross

2 Q You didn't see it being filled out, is that  
3 correct?

4 A The loan application?

5 Q Yes.

6 A No.

7 Q Would you look at Government's Exhibit 10-A?

8 Do you recognize your secretary's handwriting?

9 A My secretary's handwriting?

10 Q Yes.

11 A On which item did you say, 10-A?

12 Q The application form.

13 A No, I don't see any secretary's handwriting appear-  
14 ing on this anywhere.

15 Q In other words, you don't know whose handwriting  
16 it is?

17 A No.

18 Q I can't hear you, sir.

19 A No, but I am familiar enough with my secretary's  
20 writing to know -- which area of this are you identifying  
21 as my secretary's handwriting because I don't see any-  
22 thing here that resembles even remotely her handwriting.

23 Q Did you recognize any of the handwriting on that  
24 exhibit?

25 A The signature is familiar. It looks like mine.

144

1 jwbr 317

Edman-direct

2 operate the place. So during the most season while the  
3 restaurant business was in a decline, like June, July and  
4 August and into September, four months, I said \$25,000 we  
5 needed for those four months to operate that place and  
6 keep it alive and that money never came.

7 Q Did there come a time when Mr. Worthington  
8 asked you to sign a bank loan application?

9 A Yes.

10 Q I am showing you Government's Exhibit 8 in evi-  
11 dence, which is a Bankers Trust Company loan folder made out  
12 to Andre Edmans and 8-A in particular is a loan application.  
13 Is that your signature on the bottom of 8-A in evidence?

14 A Yes, sir, this is my signature, but this is not filled  
15 out by me.

16 Q Tell us the circumstances surrounding your signing  
17 of that document, 8-A in evidence?

18 A I signed that in the purpose in the blank what  
19 he said he going to fill it and going to get a bank credit  
20 for to run the place.

21 Q Look carefully at all the items that are filled  
22 out there above your signature. Has any item there been  
23 completed by you?

24 A Nothing, sir, besides my signature.

25 Q Did you ever advise Mr. Worthington where you were



1 jwbr 321 Edman-direct

2 Q He is not your brother-in-law?

3 A No, sir, I don't have any.

4 Q Do you know whether Ralph Preuss was asked to  
5 sign a co-maker's statement in connection with this  
6 loan application?

7 A No.

8 Q Did you ever see this co-maker's statement signed  
9 by Ralph Preuss allegedly to your brother-in-law?

10 A No.

11 Q On 8-C, which is an installment promissory note,  
12 is that your signature at the bottom?

13 A Yes, it is mine.

14 Q And again 8-D, is that your signature on the bottom  
15 of that note?

16 A Yes, sir.

17 Q I would like you to look at 8-E and 8-F in  
18 evidence and I ask you whether you have ever seen those two  
19 documents before?

20 A No, sir.

21 Q Those are employment verification letters,  
22 are they not?

23 A Never I saw this, sir.

24 Q Directing your attention to the writing which  
25 appears at the bottom of 8-E and 8-F --

450

1 jwbr 323

Edman-direct

2 Bankers Trust Company in connection with that loan appli-  
3 cation?

4 A I don't know anything for this, sir. He never  
5 was discussing anything with me about those matters.

6 Q Did you ever go to the Bankers Trust Company with  
7 Mr. Worthington?

8 A Yes, I was once there.

9 Q Tell me what happened, when it was and what  
10 happened.

11 A You see, one thing just like I say a few minutes  
12 ago when he took my signature in the bank he said that he  
13 will fill it, he knows the banking better than I do.  
14 I know how to operate the restaurant, but not for the paper  
15 matter and things. Then he will fill that out and he will  
16 apply the loan. But we needed very badly money for the  
17 restaurant going, but the money was coming from nowhere.  
18 So he said to me that he applied the loan so we was going --  
19 between 40th and 42nd or 43rd, Madison Avenue, Bankers  
20 Trust.

21 Q Did you accompany him?

22 A No, the location just like I said 77th Street.

23 Q I understand that. Did you go down to the  
24 Bankers Trust Company somewheres in the 40's on Madison  
25 Avenue with Mr. Worthington?



1           jwjw                           Airey - direct                           498  
2           submitted by the tenant.  
3                           MR. REILLY: No further questions.  
4                           MR. STOLZAR: No questions.  
5                           THE COURT: You are excused.  
6                           (Witness excused)  
7                           MR. REILLY: The government calls Steven  
8           Bursey, your Honor.  
9  
10          S T E V E N           B U R S E Y ,                           called as a  
11                           witness on behalf of the government, being first  
12                           duly sworn, testified as follows:  
13          DIPECT EXAMINATION  
14          BY MR. REILLY:  
15                           Q           Mr. Bursey, where are you employed?  
16                           A           I am employed as a Special Agent for the  
17                           Federal Bureau of Investigation, New York City.  
18                           Q           And how long have you been a special agent  
19                           for the Federal Bureau of Investigation?  
20                           A           Approximately four and a half years.  
21                           Q           Did you have occasion to arrest the defendant  
22                           Robert Worthington?  
23                           A           Yes, I did.  
24                           Q           When was that?  
25                           A           I believe it was November 11, 1974.

XXXX

1	jwjw	Airey - direct	500
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2 MR. REILLY: We are attempting to p re on  
3 the night he attempted to arrest the defendant he gave  
4 instructions that he wasn't there. When they looked  
5 around they found him in the closet.

6 THE COURT: The man had already been indicted.

7 Is it that important?

8 MR. REILLY: I wouldn't say it's that important,  
9 your Honor. However, there was a second occasion when they  
10 went to arrest Mr. Worthington in connection with a  
11 second indictment.

12 THE COURT: I think you better stay away  
13 from that.

14 MR. REILLY: What is important is, your  
15 Honor --

16 THE COURT: I am not talking of what is  
17 important. I am talking about this man's rights after he  
18 has been indicted.

19 MR. REILLY: Your Honor, they found in his  
20 possession various cards under various names. It is important  
21 to this case, your Honor, because these were signatures  
22 used on the applications.

23 This has very little relevance to the other  
24 case. It has nothing to do with the arrest or circumstances  
25 of the other charge. Merely that these were in his possession



1 jwjw Airey - direct 501

2 an R.T. Worthington and Robert W. Garris --

3 THE COURT: Are you going to bring out the  
4 arrest warrant?

5 MR. REILLY: I don't think it is necessary  
6 to bring that out. They were given by Mr. Worthington  
7 to the FBI. Theodore Garris, Robert W. Garris, R.T.  
8 Worthington. Here are the signatures. If it is going to  
9 be argued that the government hasn't shown that it is one  
10 and the same person I think it's relevant.

11 THE COURT: So as far as that is concerned,  
12 I will admit that. But not the other one.

13 MR. STOLZAR: It doesn't necessary show  
14 why he had them.

15 THE COURT: He had them for some reason or  
16 reasons it is conceivable.

17 MR. STOLZAR: He had an arrest warrant, but  
18 didn't have a search warrant.

19 (In open court)

20 Q Did you have an encounter with the defendant,  
21 Robert Worthington in December 1974?

22 A Yes, I did.

23 Q Where was that?

24 A In Brooklyn, New York on Atlantic Avenue.

1 jwjw

Airey - direct

502

2 Q At that time -- did you proceed to Manhattan  
3 in company of Mr. Worthington?

4 A Yes.

5 Q In Manhattan did you ask to see certain  
6 documents that he had in his possession?

7 A Yes, he produced certain documents.

8 Q I am going to show you 18 for identification  
9 and ask you whether you recognize this document.

10 MR. STOLZAR: If your Honor please, I have  
11 an objection to the entire line of questioning as immaterial  
12 and irrelevant to the issues in this case and it had taken  
13 place after the indictment and for the circumstances under  
14 which the documents were given by the witness.

15 THE COURT: I am going to overrule that.

16 A Yes, I recognize all of these items.

17 Q Sorry, I can't hear you.

18 A I recognize all of these items.

19 Q How do you recognize them?

20 A These are the ones Mr. Worthington supplied to  
21 me and these are the ones I put in the envelope and had  
22 in my files.

23 Q Did he have them in his possession at the time?

24 A Yes.

25 Q Do you recall where?



1 jwjw Airey - direct 503

2 A Some one his person and others in a briefcase.

3 MR. REILLY: No further questions.

4 I move in evidence Group Exhibit 13.

5 MR. STOLZAR: Objection, your Honor.

6 MR. REILLY: 19. I am going to show them

7 to counsel.

8 MR. STOLZAR: Objection, your Honor. May

9 I have a voir dire?

10 THE COURT: Well, I already -- yes, you can

11 have a voir dire.

12 VOIR DIRE EXAMINATION

13 BY MR. STOLZAR:

14 Q Mr. Bursey, what did you say to Mr. Worthington

15 concerning the papers and documents in his possession

16 at the time that you encountered him in December 1974?

17 A I asked him to produce his wallet for me.

18 I asked him --

19 Q You asked him to produce his wallet for you?

20 A Yes, I did, and I also said I would like to

21 examine his briefcase.

22 Q Did you have a search warrant?

23 A Not a search warrant, no.

24 Q Did you advise him of his constitutional

25 rights at that time?

1 jwjw

Airey - direct

504

2 A Yes, sir.

3 Q And what did you say to him about his  
4 constitutional rights?

5 A I didn't say anything about them.

6 Q What?

7 A I didn't say anything about them.

8 Q You didn't say anything to him? I thought  
9 you just told me you warned him of his constitutional  
10 rights at that time.11 A I did, I advised him of his rights prior to  
12 that, prior to --

13 Q At that time did you advise him of his rights?

14 A There was no need to.

15 Q When did you advise him as to his rights?

16 A Approximately twenty minutes before.

17 Q And what did you say to him?

18 A I used the standard procedure for giving  
19 everybody their rights.

20 Q What did you say to him, Mr. Bursey?

21 A I don't understand the question.

22 Q You don't understand English.

23 THE COURT: What were those rights you said?

24 A I stated his rights to him individually.

25 Q I asked you what you said in the words that



1           jwjw                           Airey - direct

505

2           you said them.

3                   A           I told him that he had the right to remain  
4           silent. I told him that anything he told me could be  
5           used against him in court. I told him that he had the  
6           right to have an attorney, to have an attorney present.  
7           Then I asked him if he understood these rights. He  
8           stated that he did.

9                   Q           Did you tell him that he didn't have any  
10          obligation to turn over any papers or documents to you  
11          and that these documents that he turned over to you  
12          might be used against him?

13                  A           He did have an obligation to turn them over.

14                  Q           Did you have a search warrant?

15                  A           No, I didn't.

16                  Q           Did you have a right to examine his person  
17          at that time?

18                  A           Yes, sir, I did.

19                  Q           Would you explain to us what that right  
20          was.

21                               MR. REILLY: Your Honor, may we have a side  
22          bar.

23                               THE COURT: Yes.

24                               THE COURT: Did you have an arrest warrant?

25                               THE WITNESS: Yes.

1 jwjw

Airey - direct

506

2 (At the side bar)

3 MR. STOLZAR: May I ask your Honor to ask  
4 him whether he had an arrest warrant for this case or  
5 another? I think it should be clarified to the jury that  
6 the arrest warrant was not in connection with this case,  
7 or whatever the fact was.

8 THE COURT: Do you insist on it?

9 MR. REILLY: If counsel insists on it, I  
10 have no objection whatsoever. I think he should think  
11 better of it inasmuch as it indicates the defendant is  
12 under charges other than these charges.

13 MR. STOLZAR: That is all right.

14 THE COURT: You want that question asked.

15 MR. STOLZAR: Yes.

16 THE COURT: All right.

17 (In open court)

18 BY MR. STOLZAR:

19 Q Mr. Bursey, you said you had an arrest  
20 warrant.

21 A Yes, I did.

22 Q Was that an arrest warrant in connection with  
23 this indictment in this case?

24 A Let me rephrase that. I was not in physical  
25 possession of an arrest warrant. I had authorization to



1 jwjw Airey - direct 507

2 arrest granted by the United States Attorney's Office.

3 Q You had authorization?

4 A Yes.

5 Q Did you exhibit a warrant to the defendant?

6 A No, sir, I never exhibit warrants.

7 Q Did the defendant ask you to exhibit a

8 warrant?

9 A I don't believe he did.

10 Q You don't remember?

11 A I don't believe he did.

12 Q You don't believe. Do you know?

13 A I can't recall.

14 Q What?

15 A I cannot recall.

16 MR. STOLZAR: If your Honor please, I again

17 renew my motion not to enter the document.

18 THE COURT: Objection overruled.

19 Received in evidence.

20 (Government's Exhibit 19 received in

21 evidence)

22 MR. STOLZAR: I take exception, your Honor.

23 MR. REILLY: Your Honor, at this time

24 I would like to show Government's Exhibit 19 to the jury.

25 I have no further questions of this witness.

1 jwjw

Airey - direct

508

2 (Witness excused)

3 MR. REILLY: Your Honor, while the jury is  
4 examining the documents may we approach the side bar?

5 THE COURT: Yes.

6 (At the side bar)

7 MR. REILLY: Your Honor, our next and last  
8 witness is the handwriting expert. Prior to his taking  
9 the stand I would like to show the jury the documents  
10 that he examined so that they can make something out of  
11 what he is saying. It will take about twenty minutes  
12 for them to do it, I don't know how long, maybe fifteen  
13 minutes.

14 THE COURT: I don't think you need to do that.  
15 You don't have copies of these things for them?

16 MR. REILLY: We had prepared a chart for  
17 which we have copies.

18 THE COURT: I don't think we need to  
19 show them. We'll take a short recess. It's close to time.  
20 I don't think you need a twenty minute period for the  
21 examination of these documents. We'll take a short recess.

22 (In open court)

23 THE COURT: We'll take a short recess.

24 (In the robing room)

25 THE COURT: Yes?



jwjw

509

MR. STOLZAR: I just wanted the record to reflect that your Honor had called a short recess and left the bench. Some of these jurors stepped out of the room, some of the other jurors are still there examining documents and Mr. Reilly said to them that they should continue examining the documents and as they finished to leave.

MR. REILLY: After talking to your clerk, your Honor, and saying "Shall they examine the documents or shall they leave," he said, "Stay there until they examine the documents."

Is there an objection to that?

MR. STOLZAR: I am not making an objection.

MR. REILLY: I thought your attitude indicated an objection to the procedure.

(Recess)

end take

1 1 jwbr

5/21  
2

2 (In the robing room.)

3 MR. STOLZAR: Your Honor, at thistime I would  
4 like to make a motion to suppressGovernment's Exhibit 19 on the  
5 ground of unreasonable search and seizure and on the ground the  
6 items are not evidence of any crime.

7 THE COURT: The objection raised was that they  
8 aren't relevant and immaterial, to my understanding, when  
9 they were offered.

10 MR. STOLZAR: I am now making a motion to  
11 suppress on the grounds stated.

12 MR. REILLY: Your Honor, the arrest was made  
13 in connection with an authorization to arrest in connection  
14 with the charges set forth in a second indictment in this  
15 case. A complaint was filed, as Mr. Stolzar knows, immed-  
16 ately after the arrest of Mr. Worthington. Those charges  
17 have been returned by a grand jury finding probable cause  
18 at that time, the magistrate found probable cause for that  
19 arrest.

20 THE COURT: These were seized in the course of  
21 that arrest?

22 MR. REILLY: Yes, they were seized in the course  
23 of that arrest after his being fully advised of his con-  
24 stitutional rights.

25 THE COURT: Well, I will overrule the objection.



2 jwbr Caputo-direct

It seems late now, since the jury has already examined them,  
to suppress them.

I will treat it as a motion for a mistrial and  
I will deny it.

(In open court, jury present.)

MR. REILLY: The government calls Luciano Caputo.

L U C I A N O V. C A P U T O, called as a witness  
by the government, having been first duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Caputo, where are you employed?

A I am employed by the New York City Department  
of Investigation.

A What is your position there?

A I am a handwriting expert. I am the official  
handwriting expert for New York City.

Q In addition to that, are you a handwriting expert  
for persons other than New York City?

A Yes, I have been given permission by my employer  
to do outside private work provided there is no conflict  
of interest, no conflict of time and no political conno-  
tations which there aren't any in this instance. I am  
on my own time now.

3 jwbr Caputo-direct

Q What is your experience in the examination of handwriting specimens?

A I have been interested in handwriting for the past 40 years. In 1935 --

MR.STOLZAR: If your Honor please, we will concede that Mr. Caputo is as he called himself a handwriting expert.

Q I would like to ask you, Mr. Caputo, whether or not prior to coming here today you have had occasion to examine the following documents -- and please tell me whether you have given or not given consideration to any particular aspect of the document -- the first is Exhibit 1-A, a Bankers Trust Company installment loan application in the name of R. Theodore Worthington, dated 9/1/73.

A Yes, my opinion will include all the writings which appear on the face of this document.

Q With respect to Exhibit 1-B, I will ask you whether you examined 1-B in evidence which is an installment promissory note.

A Yes. I looked at the writings which appear on the bottom portion of this document.

Q I show you Exhibit 2 in evidence which is a First National City Bank credit statement in the name of R. Theodore Garriss, dated 10/1/73. Have you examined that document?



9 jwbr Caputo-direct

1  
2 Q 18-A, which is a letter addressed to Mr. Reilly  
3 Gorman, dated April of 1975.

4 A I included everything.

5 Q I am now showing you from Exhibit 19 in evidence  
6 the following four documents: A BankAmericard, a Master  
7 Charge card, Chemical Bank, an American Express card, a  
8 driver's license in the name of Robert W. Garris and a check  
9 dated 8/6/74, signed by R. Theodore Garris.

10 Did you include those in your examination?

11 A Yes, they were all included.

12 Q Were all the writings appearing on those exhibits  
13 included?

14 A Yes, sir.

15 Q Mr. Caputo, after examining these documents did  
16 you come to an opinion as a handwriting expert concerning  
17 the authorship of the items which you examined on those  
18 documents?

19 A Yes, I did.

20 Q Will you state that opinion?

21 A It is my opinion that all of these documents were  
22 prepared by one and the same person.

23 Q In connection with your testimony today did you  
24 prepare a chart during the course of your examination of  
25 these documents?

1 jwbr

Caputo-direct

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2 Underneath some of them I have placed the  
3 government's exhibit number. For example, No. 1, my number  
4 is Government's Exhibit 1-A, then 1-B. Then on the left  
5 I didn't have the number, so I identified it as the American  
6 Express Credit Card and the Chemical and the Bank American  
7 and so forth. So all of these are identified in that fashion,  
8 but they were all taken from the documents which I have  
9 examined.

10 I selected these to show some of the identifying  
11 characteristics. As I previously stated, my identification  
12 was not based on the chart primarily, but secondarily and  
13 again to repeat the chart was prepared so that I could  
14 illustrate my characteristics that I found common and con-  
15 sistent in all the questioned writings.

16 Q Will you state the basis for your opinion  
17 that these writings were all by the same individual?

18 A Our handwriting is an accumulation of what we have  
19 been taught. Each one of us writes different. We learn  
20 to write when we are children and for example in a classroom  
21 of 40 children a teach will put a letter on the board and  
22 the 40 children will look at it but each one will see it  
23 differently and the child will interpret it differently on  
24 the paper so that you have 40 different writings and the teacher  
25 sometimes can tell who writes who because she can see it is



1 jwbr

Caputo-direct

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2 a 7.

3 Let us go up to No. 13, which is on the upper  
4 right-hand portion and we see "Dime Savings Bank, Irving  
5 Trust, Trust," that T is made like a 7, the last T in  
6 "Trust."

7 Let us look at No. 55, which is in the center  
8 portion, the word "Street" and the last T resembles a 7.

9 Right to the right of that, No. 65, again we have  
10 the word "Street" and again the T looks like a 7.

11 Another one is -- oh, we said 55.

12 Now, let us look at the structure of the capital  
13 W where, for example, in No. 1, upper left-hand, the first  
14 one, the center portion is low and the bottom portions are  
15 rounded.

16 Now, look at the terminal stroke which rises  
17 slightly higher than the initial stroke and in some cases  
18 there is a little hook, that is the W in No. 1. Right  
19 underneath again we have the W.

20 Now, these appear different, but the proportion  
21 is there, the only difference is No. 2 is written in a larger  
22 hand, but the proportion is the same.

23 No. 3, in the American Express Card we see that same  
24 formation there.

25 No. 4, round at the bottom, short center and it

1 jgbr Caputo-direct 532  
2 remember his interpretation of the symbols on the exhibits.

3 Q Mr. Caputo, did you take handwriting exemplars  
4 of defendant Robert Worthington?

5 A Yes, I did.

6 Q And do you recall when you took those hand-  
7 writing exemplars?

8 A I took them on May 16, 1975 in the early morning --  
9 about 9:30, something like that. 9, 9:30, 10 o'clock.

10 Q Was that immediately prior to the selection of  
11 the jury in this case?

12 A Yes, that was.

13 Q Did you take those samples right here in this  
14 courtroom?

15 A Yes, at that desk in this room.

16 Q And you did obtain some samples, is that cor-  
17 rect?

18 A Yes, I obtained samples.

19 Q Did you use those in your evaluation?

20 A No, I could not use them.

21 Q Why did you not use them, or why could you not  
22 use them?

23 A Well, the subject was very, very nervous, his  
24 hands were shaking and he was visibly very nervous and  
25 as he wrote I noticed he was writing very slowly and in my



1 jgbr

Caputo-direct

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2 opinion because of the adverse conditions under which the  
3 samples were taken they do not represent his normal  
4 writing habit and pattern, so I was not able to use them.

5 Q Did you observe the condition of his hand when he  
6 was writing these exemplars?

7 A Very shaky, very nervous.

8 Q Did you have any conversation with him about his  
9 being nervous?

10 A Well, I asked him "Are you nervous?".

11 He said "I am very, very nervous" and I even  
12 gave him a piece of gum to try to relax him, and I said  
13 "Exercise with your hands, drop your hands, take your time."  
14 Then he continued and that is it.

15 Q Would the fact of a person being nervous affect  
16 his handwriting?

17 A Yes, it would under those conditions.

18 Q In your experience does the speed or lack of speed  
19 with which an individual writes affect the handwriting?

20 A Yes, it would -- yes, it would change or alter it  
21 slightly and that was taken into consideration. Speed is  
22 always taken into consideration, one of the factors.

23 MR. REILLY: No further questions.

24

25

1           jwbr                           Caputo-cross                           535

2       writing characteristics will permeate through the writing

3       whatever the conditions might be?       Certain characteristics

4       will come through?

5           A       Yes, they will.

6           Q       So that if the person writing is nervous or elated

7       or dejected still the same characteristics would come out?

8           A       To a degree, yes, they would.

9           Q       And you stated here today that you couldnot use the

10       samples that you took because he was nervous and he was

11       perspiring and what have you in making your analysis?

12          A       Yes.

13          Q       The only conclusion that you come to from the

14       examination of the documents that were shown to you by Mr.

15       Reilly is that the entire documents, to the extent that you

16       examined them, were in the handwriting of the same person?

17          A       Yes, sir.

18          Q       That is all?

19          A       That is all.

20          Q       Is there any possibility that some of the writings

21       on those documents which you examined were in someone

22       else's handwriting?

23          A       Well, I am not infallible but to the best of

24       my ability what I testified to was in my opinion by one

25       person.



1 jwbr

Caputo-cross

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2 MR. STOLZAR: I have no further questions.

3 MR. REILLY: Your Honor, may I ask one question  
4 on redirect actually which I failed to ask on  
5 direct examination and it has to do with writings other  
6 than he has already discussed? It will only be one  
7 question.

8 THE COURT: They do not appear on the chart?

9 MR. REILLY: They do not appear on the chart,  
10 no.

11 May I approach the bench?

12 THE COURT: No, talk to counsel.

13 (Pause.)

14 MR. REILLY: May I proceed, your Honor?

15 THE COURT: All right.

16 REDIRECT EXAMINATION

17 BY MR. REILLY:

18 Q I show you Exhibits 10 and 10-A, Mr. Caputo,  
19 and I show you the signature Joseph A. Semper which appears  
20 on the bottom of 10-A and 10-B. Do you have an opinion  
21 asto whether those two exhibits were written by the same  
22 person?

23 A Yes.

24 Q What is that opinion?

25 A They were written by one and the same individual.

3 MR. REILLY: No further questions.

5 BY MR. STOLZAR:

9 THE COURT: The signatures.

12           A       I was thinking of two different writings on this here.  
13       I have to examine and study it more at length.    I would  
14       have to -- no, I answered too hastily.   I would have to  
15       reexamine these.

17 REDIRECT EXAMINATION

19 Q Why would you have to reexamine them?

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1 jwbr Caputo-redirect 551

2 continuous motion, that is we start from the beginning

3 and continue up and around, but in this case the letter

4 starts at the bottom, then there is a break, and the

5 pen continues up. Now, that is an unnatural break. That

6 could be due to a person looking at this writing and that

7 writing and trying to copy because there would be no reason

8 to have a break at that point. For example, if we write,

9 let us say, the letter L and we come down the tendency is to

10 continue, but if we stop midway, carefully lift the pen and

11 then continue there is a reason for it, and the reason may

12 be that we could probably copy something.

13                   Also, the S appears like an L, which is dissimilar  
14 with a capital S on it.   The H is looped in this instance  
15 and it is not looped in this instance.   The A appears on  
16 here, but an R appears on here, so I can't compare that.

17           The P is made in rhythm    and this is written slowly  
18       so I would have to alter my opinion and reexamine it, but in  
19       this case in my opinion it is not likely they were written  
20       by one and the same .

21 MR. REILLY: No further questions, your Honor.

22 THE COURT: We will adjourn until 2 o'clock.

23 (Witness excused.)

24 (Luncheon recess.)

1 jwbr

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2 Exhibit 21 in evidence relates to American Planning and  
3 American Planning, Incorporated indicating that an  
4 examination showed no such certificate of incorporation  
5 for those two corporations.

6 Your Honor, the government has no further  
7 witness. It rests.

8 THE COURT: We will take a short recess.

9 (The jury left the courtroom.)

10 MR.STOLZAR: Your Honor, I now move to acquit  
11 the defendant on each and every count in the indictment on  
12 the ground that the government has failed to prove the  
13 defendant guilty beyond a reasonable doubt on any of the  
14 11 counts.

15 THE COURT: I think it is a question for the jury  
16 in this case. The motion is denied.

17 How long do you expect to take?

18 MR. STOLZAR: If your Honor please, we have  
19 no witnesses.

20 THE COURT: You have no witnesses?

21 MR. STOLZAR: No.

22 THE COURT: How long do you expect to be in the  
23 summations?

24 MR. REILLY: The government expects it would  
25 take -- I would like to allocate 40 minutes in summation,



1 jwbr

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2 the defendant rests.

3 THE COURT: Come up to the side bar, please.

4 (At the side bar.)

5 THE COURT: You are renewing your motions,  
6 I assume?

7 MR.STOLZAR: Yes.

8 THE COURT: The same motions are renewed and  
9 the same decision.

10 MR.STOLZAR: Thank you.

11 (In open court.)

12 MR. REILLY: May it please the Court, Mr.  
13 Stolzar, ladies and gentlemen of the jury:

14 In this closing statement I will have the opportu-  
15 nity to review with you the evidence that we heard during  
16 the past few days. It hasn't been a very long trial in  
17 terms of days. We have only been some two and a half  
18 days hearing evidence.

19 However, that time has been crammed with some  
20 23 government witnesses, 21 exhibits in evidence, many of  
21 which you haven't seen, but many of which you heard testimony  
22 about, and these documents that you heard and saw being  
23 introduced in evidence form the guts of this case.

24 The testimony that you have heard from the witness  
25 stand and only that testimony and other evidence admitted at

1 qjw 2

2 BY THE CLERK:

3 Q Have you agreed upon a verdict on Count 1?

4 A Yes, we have.

5 Q How do you find the defendant?

6 A Guilty.

7 Q How do you find the defendant on Count 2?

8 A Guilty.

9 Q How do you find the defendant on Count 3?

10 A Undecided.

11 Q How do you find the defendant on Count 4?

12 A Guilty.

13 Q How do you find the defendant on Count 5?

14 A Guilty.

15 Q How do you find the defendant on Count 6?

16 A Undecided.

17 Q How do you find the defendant on Count 7?

18 A Guilty.

19 Q How do you find the defendant on Count 8?

20 A Guilty.

21 Q How do you find the defendant on Count 9?

22 A Guilty.

23 Q How do you find the defendant on Count 10?

24 A Guilty.

25 Q How do you find the defendant on Count 11?



1 qjw 4

2 now move to set aside the verdict of the jury on Counts  
3 1, 2, 4, 5, 7, 8, 9, 10 and 11 as against the weight of  
4 the evidence.

5 THE COURT: I would have to deny the motion.  
6 I think it was a factual question for the jury and I am  
7 bound by that decision.

8 MR. REILLY: Your Honor, the government has  
9 an application at this time. The government applies  
10 to have the defendant remanded for the following reasons:

11 Under Section 3148 there are two criterion  
12 to be considered, one is risk of flight and the other is  
13 danger to the community.

14 Under the risk of flight it is apparent  
15 that really the only reason this case went to trial was  
16 because of the obvious probability that the defendant  
17 would be incarcerated. The case was an overwhelming  
18 one against him and this does not of course denigrate  
19 from his right to have a jury trial. Considering the amount  
20 of the evidence and considering that this is the defendant's  
21 fifth time that he has been convicted on similar offenses,  
22 it is apparent that he has some real reason not to appear  
23 again. There is an indictment for a related offense  
24 outstanding in New York County with respect to the Temple  
25 Bank loan. He is on bail there for \$7500 cash. He has in

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